Supreme Court, U.S.
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No. 10-370

IN THE

Supreme Court of the United States

KATHLEEN A. STEWART, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Petitioner,

v.

AT&T F/K/A SBC COMMUNICATIONS; AND AT&T PENSION BENEFIT PLAN-NONBARGAINED PROGRAM F/K/A SBC PENSION BENEFIT PLAN AND SBC PENSION BENEFIT PLAN-NONBARGAINED PROGRAM,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Two questions are presented:

1. Where a pension plan contemplates that the pension of a re-hired employee may be offset by the pension previously paid to the employee upon her earlier separation of employment, but does not specify the methodology for calculating the offset, may the plan sponsor retroactively amend the plan to adopt any offset methodology it chooses, thereby acting in conflict with a longstanding Treasury Regulation and decisions of this Court, the Second Circuit, and other Courts of Appeals, all holding that application of retroactive discretionary conditions to the receipt of pension benefits violates ERISA's anti-cutback rule?

2. Where a pension plan that contemplates that the pension of a re-hired employee may be offset by the pension previously paid to the employee upon her earlier separation of employment, but does not specify the offset methodology, may the offset exceed the actuarial equivalent of the earlier distribution, in contravention of ERISA's actuarial equivalence rule and in conflict with the Ninth Circuit's holding on this issue and this Court's recent observations in another offset case?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are identified in the caption of the case.

CORPORATE DISCLOSURE STATEMENT

Because the Petition is filed on behalf of Kathleen A. Stewart and all other similarly situated *individuals*. a corporate disclosure statement is not applicable. Supreme Court Rule 29.6.

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Fifth Circuit

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District Court

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Order Denying as Untimely Stewart's Motion for Class Certification (filed 8/06/09) (unpub) (A-16)

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[1] References to documents in the Appendix are denoted A-1, A-2 and so forth. Reference to Stewart's Exhibits in the district court are denoted PX1, PX2 and so forth, and, if in the Appendix, are also denoted with the Appendix page (e.g., PX2, A-45). References to Exhibits or briefs in the district court that are *not* in the Appendix are referenced by their record number, Exhibit number (if applicable), and bate-stamp number the district court placed on the lower right corner of each page (denoted CA except for Stewart's Exhibits, which are denoted SR, as the district court assigned a different type of bate-stamp number to Stewart's Exhibits) (e.g., R90, PX14, SR1043-1147).

Order Denying as Moot Stewart's Motion for Reconsideration of the Order Denying as Untimely Her Motion for Class Certification (filed 9/09/09) (unpub) (A-18)

JURISDICTION

On June 17, 2010, the Fifth Circuit affirmed the district court's grant of summary judgment for defendants. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §1254(1). The basis for federal jurisdiction in the district court was §502(e) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1132(e) (A-26).

PRINCIPAL STATUTES AND REGULATIONS

29 U.S.C. §1054(c)(3) [ERISA §204(c)(3)] (commonly known as ERISA's "actuarial equivalence rule") (full text at A-21)

29 U.S.C. §1054(g) [ERISA §204(g)] (commonly known as ERISA's "anti-cutback rule") (full text at A-21)

26 C.F.R. §1.411(d)-4, Q&A's 4-7 (enforces ERISA's anti-cutback rule) (full text at A-36)

29 U.S.C. §1054(h) [ERISA §204(h)] (ERISA's plan amendment notice rule) (full text at A-22).

STATEMENT OF THE CASE

I. OVERVIEW OF THE DISPUTE AND THE REASONS FOR GRANTING THE PETITION

This dispute arose in 2002 when Kathleen Stewart ("Stewart") discovered that SBC Inc. (n/k/a AT&T, Inc.) was offsetting the lump sum pension she received in 1996 under the Ameritech Management Pension Plan ("AMPP"), a plan sponsored by Ameritech, against her Career Average Minimum ("CAM") Benefit under the SBC Plan. In 2002, the SBC Plan did not provide for an offset against the CAM Benefit as to benefits previously paid under a non-bargained plan (here, the AMPP).

After Stewart complained to SBC officers and benefits personnel that the offset exceeded the actuarial equivalent of her AMPP benefit, SBC adopted, on 4/27/04, an Amendment to the SBC Plan that *retroactively* authorized a General Offset or Special Offset against the CAM Benefit. ERISA's anti-cutback rule, ERISA §204(g), and enforcing Treasury Regulation ("TR") 1.411(d)-4 prohibit plan amendments that reduce or eliminate benefits that have already accrued. TR 1.411(d)-4 also mandates that pension plans identify *objective* criteria in determining benefits and, therefore, prohibits pension plans from retroactively adding "employer discretion or objective conditions" to accrued benefits. In light of the Amendment's *retroactive* effect to dates *years before* the Amendment's adoption and resultant reduction to the CAM Benefit that had already accrued, and the imposition of new conditions to receipt of the accrued

CAM Benefit (application of the Offsets), the Amendment violated ERISA's anti-cutback rule and enforcing TR.

As importantly, defendants never disputed Stewart's contention that the General Offset and Special Offset both exceeded the actuarial equivalent of Stewart's 1996 AMPP lump sum. As explained in this Petition, application of either Offset violated ERISA's actuarial equivalence rule and caused Stewart's net CAM Benefit to be understated.

Review is warranted for several reasons. First, the Fifth Circuit's holding that the Amendment did not violate ERISA §204(g), ERISA's anti-cutback rule, conflicts with enforcing TR 1.411(d)-4 and the anti-cutback holdings in (i) *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 747-748 (2004); (ii) *Frommert v. Conkright*, 433 F.3d 254 (2nd Cir. 2008), which dealt with a "phantom offset" similar to the Special Offset here; and (iii) other Court of Appeals decisions cited herein.

Second, the Fifth Circuit's approval of the General Offset[2] conflicts with (i) ERISA §204(c)(3), ERISA's actuarial equivalence rule, (ii) *Miller v. Xerox Corp. Retirement Income Guarantee Plan*, 464 F.3d 871, 874-875 (9th Cir. 2006), which held that offsets for prior distributions must comply with ERISA's actuarial equivalence rule and not exceed the actuarial equivalent of the prior distribution, and (iii) this

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[2] The Fifth Circuit glossed over any impropriety as to the Special Offset.

Court's recent observations in *Conkright*, suggesting that actuarial equivalence may be the appropriate remedy where the plan failed to state its offset methodology. Although the Fifth Circuit held that the General Offset did not violate ERISA's actuarial equivalence rule (A-4, 5), it was undisputed that the General Offset (like the Special Offset) exceeded the actuarial equivalent of Stewart's AMPP benefit.

Finally, answers to the Questions Presented are of vital importance to the thousands of participants around the country who received a pension distribution upon their separation of employment and subsequently returned to work for their former employer. Such participants and others like them in the future need assurance that, upon their final departure from the company, any offset against their final pension benefits will not be based on a *retroactively*-adopted arbitrary valuation methodology previously omitted from the plan, and, in any event, will not exceed the actuarial equivalent of their prior pension payment. Indeed, an offset in excess of the actuarial equivalent requires such participants to pay back *more* than their prior pension payment–a result violative of ERISA's actuarial equivalence rule, 29 U.S.C. §1054(c)(3) (A-21), and abhorrent to ERISA's primary goal of protecting participants' interests in their employer-provided pension benefits. 29 U.S.C. §1001 ("Congressional findings and declarations of policy."). Moreover, it would confer a windfall on sponsors of defined benefit plans by effectively requiring participants to partially fund the plan–an obligation Congress specifically reserved for plan sponsors. 29 U.S.C. §1082(c)(11), (e), (f).

Answers to the Questions Presented would also benefit plan sponsors, plan administrators and other plan fiduciaries, as they need certainty as to what they may lawfully do when the plan contemplates an offset for a prior pension distribution, but fails to specify the offset *methodology*. Given the numerous amicus briefs filed in this Court in the recent *Conkright* offset case, there can be no dispute that this need is great, or that offsets impact the retirement security of thousands of participants in this country and, thus, our national interests. The Questions Presented are clearly important federal questions that warrant granting the Petition.

I. FACTS

A. Stewart's Prior Participation in the AMPP and Prior AMPP Benefit, and Her Subsequent Participation in the SBC Plan

From 1971 until July 1996, Stewart worked for Ameritech or one of its predecessors. As an Ameritech management employee, Stewart was a participant in the AMPP. On July 1, 1996, Ameritech outsourced Stewart's department to IBM Global Services ("IBM Global") and Stewart became an employee of IBM Global.

As a result of her separation from Ameritech, Stewart was entitled to a *future* distribution of her AMPP accrued benefit--an annuity commencing *at age 65* in the amount of $2,400.61/month. *See* AMPP Final Benefit Statement for Stewart (PX2, A-45). However, as permitted under the AMPP, Stewart elected to

receive her age-65 AMPP annuity in an optional form--an actuarially equivalent immediate lump sum in the amount of $110,450.36. *Id.* The age-65 AMPP annuity and immediate AMPP lump sum are not in dispute.

In January 2001, SBC, which had acquired Ameritech in 1999, terminated the Ameritech outsourcing contract with IBM Global and re-hired Stewart, who then became a participant in the SBC Plan. SBC was the Plan Administrator. SBC Plan §§3.1.1(a) and 3.2.1 (PX3, A-47). In January 2002, SBC adopted the CAM formula for computing pensions via Supplement 12 to the SBC Plan (PX6, A-53).

Under the CAM formula, the CAM Benefit is an annuity commencing at Normal Retirement Age (age 65), computed as a percentage of the participant's CAM Income (a function of compensation and service) (PX6, A-53, 54). Although participants may elect to receive their CAM Benefit before age 65, in such case the CAM Benefit will, with some exceptions not relevant here, be reduced by an Early Reduction Factor ("ERF"). The ERF is not in dispute.

B. The Initial Problem: SBC Applied an Offset Against Stewart's CAM Benefit Without Any Applicable Offset Provision in the SBC Plan.

On June 15, 2002, Stewart received two CAM estimates from SBC. Both showed that Stewart's CAM Benefit annuity payable *before* age 65 had been offset by the amount of Stewart's AMPP annuity payable *at* age 65 ($2,400.61/month), resulting in a **negative net CAM Benefit annuity of $364.73/month** at age 50,

and $463/month at age 55 (PX13, A-72-81).

Aside from the fact that the SBC Plan did not provide for an offset against Stewart's CAM Benefit, and the unreasonableness of a formula that creates a negative pension for a period of time, Stewart believed that offsetting the CAM Benefit annuity payable *before* age 65 by the AMPP annuity payable *at* age 65 was actuarially unreasonable because it erroneously assumed that the AMPP annuity payable *at* age 65 had attained that value at every age *before* age 65. Clearly, an actuarially equivalent AMPP annuity payable *before* age 65 would necessarily be smaller than the AMPP annuity payable *at* age 65 due to the longer stream of annuity payments. *See also* Final AMPP Benefit Statement for Stewart (PX2, A-45) (showing actuarially equivalent immediate annuity at Stewart's then age of 43 in the amount of $545.87/month). Accordingly, Stewart and six of her co-workers ("the Endorsers") spent *two years* complaining to SBC officers and benefits personnel that the offset methodology SBC employed was actuarially unreasonable and unlawfully reduced their CAM Benefits (R90, PX14, SR1043-1147).

C. In Response to Stewart's Complaints About the Offset, SBC Adopted an Amendment to the SBC Plan That Retroactively Added a General Offset and Special Offset.

In response to Stewart's and the Endorsers' complaints about the offsets, on April 27, 2004, SBC adopted an Amendment to the SBC Plan that *retroactively* added a General Offset and Special Offset

(PX7, A-59-65).

1. General Offset

The General Offset applies to participants who received a prior distribution from the SBC Plan or other non-bargained plan, and is *always* the age-65 AMPP annuity *regardless of the participant's age when the CAM Benefit commences*. *See* 4/27/04 Amendment (PX7 at A-61, 62); and June 2004 Summary of Material Modifications ("SMM") (PX10 at A-67) (example calculations refer to General Offset as "Current Offset"). Thus, the General Offset formula assumes the AMPP annuity commencing *at* age 65 has attained its age-65 value at every age *before* age 65. This age-65 AMPP annuity is fully deducted from the CAM Benefit annuity, and, if the participant has not attained age-65, an ERF is applied to the *remainder* of the CAM Benefit annuity. *Id.*

Because the General Offset annuity is *always* the age-65 AMPP annuity, and the ERF only applies to whatever *remains* of the CAM Benefit annuity after the General Offset, the General Offset formula invariably yields an offset annuity that exceeds an actuarially equivalent AMPP benefit. Example calculations in the June 2004 SMM unequivocally illustrate and establish these points. As importantly, in the administrative proceedings and district court, Stewart submitted her actuary's calculations and information confirming that the General Offset (like the Special Offset) exceeded the actuarial equivalent of her AMPP benefit, and this evidence was *undisputed*. Stewart addresses these points more fully later in this Petition.

2. Special Offset

The Special Offset applies to former Ameritech managers like Stewart who were outsourced to IBM Global and then later re-hired by SBC. *See* 4/27/04 Amendment (PX7 at A-62, 63); and June 2004 SMM (PX10 at A-66-68). SBC refers to these persons as "Leapfroggers."[3] Under the Special Offset, Leapfroggers receive the *greater of* the net CAM Benefit under the General Offset and the net CAM Benefit under the Special Offset. *Id.* Thus, the Special Offset utilizes both formulas to determine the net CAM Benefit for Leapfroggers.

SBC calculates the Special Offset by (i) accumulating interest on the AMPP lump from the date it was paid to the date the CAM Benefit commences using Special Offset Interest Adjustment Rates ("SOIA Rates"), and then (ii) converting this projected amount into an annuity using a specified interest rate and mortality table (PX7 at A-62-63, 65). The higher the SOIA Rate, the greater the projected lump sum and resultant Special Offset annuity and the smaller the net CAM Benefit. In the administrative proceedings and courts below, it was undisputed that the SOIA Rates were *more than double* the interest rate utilized to calculate Stewart's AMPP benefit and, therefore, the Special Offset annuity exceeded the actuarial equivalent of Stewart's AMPP benefit.

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[3] *See* PX14 at A-86.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED ON THE ANTI-CUTBACK ISSUE BECAUSE THE FIFTH CIRCUIT'S RULINGS CONFLICT WITH TREASURY REGULATION 1.411(d)-4 AND THE ANTI-CUTBACK RULINGS OF THIS COURT IN *CENTRAL LABORER'S PENSION FUND V. HEINZ*, THE SECOND CIRCUIT IN *FROMMERT V. CONKRIGHT*, AND OTHER COURTS OF APPEALS.

A. The 4/27/04 Amendment Violated ERISA's Anti-Cutback Rule Because the Offsets Were Made Retroactively Effective.

Prior to the 4/27/04 Amendment, §4.2.6 of the SBC Plan and Supplement 12, which added the CAM Benefit formula, both expressly limited any offset to benefits paid under a "Prior Bargained Plan," but even then did not specify the *methodology* for calculating the offset. *See* SBC Plan §4.2.6 (PX3, A-49) and Supplement 12 at S12.2 (PX6, A-56) (emphasis added). Stewart's received her AMPP lump sum from a non-bargained plan.

ERISA §204(g), commonly known as the anti-cutback rule, prohibits plan amendments that eliminate or reduce benefits that accrued before the amendment. 29 U.S.C. §1054(g) (A-21). Further, TR 1.411(d)-4, which enforces ERISA §204(g) and its analogue under the Internal Revenue Code [Code §411(d)(6)], explains that, because plans must identify *objective* conditions for determining benefits, they may not *retroactively* add conditions to the receipt of accrued benefits:

> A-4: (a) In general. . . . [A] plan that permits the employer, either directly or indirectly, through the exercise of discretion, to deny a participant a section 411(d)(6) protected benefit provided under the plan for which the participant is otherwise eligible (but for the employer's exercise of discretion) violates the requirements of section 411(d)(6) . . . . In addition, a pension plan that permits employer discretion to deny the availability of a section 411(d)(6) protected benefit violates the definitely determinable requirement of [Code] section 401(a), including section 401(a)(25) [requiring actuarial assumptions to be specified in the plan in a way that precludes employer discretion and makes benefits definitely determinable (26 U.S.C. §401(a)(25) (A-28))].

> A-5: For purposes of applying the rules of this section . . . , the term "employer" includes plan administrator, fiduciary, trustee, actuary, independent third party, and other persons. . . .
>
> * * *
>
> A-7: . . The addition of employer discretion or objective conditions with respect to a section 411(d)(6) protected benefit that has already accrued violates section 411(d)(6). . . .

26 C.F.R. §1.411(d)-4, answers to Questions 4, 5 and 7 (emphasis added) (full text at A-36-40).

In *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 747-748 (2004), this Court held that a plan amendment that attached new conditions to the receipt of benefits violated the anti-cutback rules, including Q&A7 of the above-quoted TR. That is precisely the effect of the 4/27/04 Amendment, as it (i) added language that, for the first time, permitted offsets to account for benefits paid under a non-bargained plan (here, the AMPP); and (ii) made the General and Special Offsets *retroactively* effective--to September 28, 2001 and January 1, 2003, respectively (PX7, A-61, 62). The anti-cutback violations are obvious.

Frommert v. Conkright, 433 F.3d 254 (2nd Cir. 2008), also supports this conclusion. There, the Second Circuit addressed a "phantom offset" similar to the Special Offset here. Noting that Xerox's pension plan had always allowed an offset for prior distributions, *id.* at 257-258, the Second Circuit nevertheless found that Xerox did not validly amend its plan until 1998 when

it first notified participants, via a summary plan description ("SPD"), of the *methodology* used to compute the phantom offset. *Id.* at 262. The Second Circuit opined that (i) a plan's SPD is an "employee's primary source of information regarding benefits (citing 29 U.S.C. §1022 (A-19)); (ii) under ERISA §204(h) (29 U.S.C. §1054(h) (A-22)), employees must be notified of a plan amendment *before* its effective date; and (iii) therefore, application of the phantom offset to employees hired before 1998 (i.e., before they were informed about the offset in the 1998 SPD) worked a retroactive reduction in their benefits, in violation of ERISA §204(g)'s anti-cutback rule. *Id.* at 262-268.[4]

Here, despite the significant economic impact of an offset, the SPD nowhere intimates that pension benefits under the SBC Plan may be offset by a value assigned to a prior pension distribution. See SPD (R90, PX4, SR876-947). Moreover, SBC employees were first notified of the General and Special Offsets in the June 2004 SMM (PX10, A-66-68), *years after* the retroactive effective dates set forth in the 4/27/04 Amendment.

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[4] *See also Layou v. Xerox Corp.*, 238 F.3d 205, 209-212 (2nd Cir. 2001) (same conclusion regarding phantom offset, explaining that SPD failed to use clarifying examples or clearly identify the "circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of benefits," as required under ERISA §1022 and its enforcing DOL regulation (citing 29 U.S.C. §1022(a), (b) (A-19); 29 C.F.R. §2520.102-2(a) (A-30) and 29 C.F.R. §2520.102-3(l) (A-31)).

Under TR 1.411(d)-4 and the compelling reasoning in *Heinz* and *Frommert*, the Fifth Circuit should have found that the 4/27/04 Amendment violated ERISA's anti-cutback rule (Count I of Stewart's Complaint). Indeed, all other Courts of Appeals find a violation of ERISA's anti-cutback rule where a plan amendment retroactively adds conditions to the receipt of benefits that have already accrued, or changes the benefit formula in a way that reduces accrued benefits.[5]

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[5] *See Rybarczyk v. TRW, Inc.*, 235 F.3d 975, 983 (6th Cir. 2001) (amendment eliminated early retirement subsidy for retirees who already satisfied the pre-amendment conditions for the subsidy); *Hickey v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*, 980 F.2d 465, 470 (7th Cir. 1992) (amendment eliminated cost of living adjustment that was part of plaintiffs' accrued benefits); *Pratt v. Petroleum Production Mnmt. Inc. Employee Savings Plan & Trust*, 920 F.2d 651, 653, 660 (10th Cir. 1990) (amendment changed date for valuing benefits); *Meagher v. International Assoc. of Machinists and Aerospace Workers Pension Plan*, 856 F.2d 1418 (9th Cir. 1988) (amendment eliminated living pension feature that had already accrued to plaintiff); *Collins v. Seafarers Pension Trust*, 846 F.2d 936, 937 (4th Cir. 1988) (amendment canceled past service credits); *Hoover v. Cumberland, Maryland Area Teamsters Pension Fund*, 756 F.2d 977, 981 n.4 (3rd Cir. 1985) (amendment retroactively changed formula for calculating accrued benefits).

B. The Fifth Circuit Failed to Address the Retroactive Effect of the Amendment or the Absence of an Offset Methodology Prior to the Amendment.

In its brief analysis of the anti-cutback issue, the Fifth Circuit failed to address the absence of an offset methodology in the SBC Plan before the Amendment, or that the Amendment made the General and Special Offsets *retroactively* effective to dates *years before* the Amendment. Rather, the Fifth Circuit reasoned, in part, that Stewart had argued that the offset equaled her AMPP lump sum (A-3), and that some employees were allowed to pay back their lump sum (A-4 at n.1).

Stewart never contended that some employees were allowed to re-pay their lump sum. Moreover, and more importantly, Stewart consistently asserted in the administrative proceedings and courts below, supported by calculations and other information from her actuary David Fleiss, that the General Offset and Special Offset *both* exceeded the actuarial equivalent or her AMPP benefit. *See, e.g.*, Stewart's Administrative Appeal (PX26 at A-225-237, in particular A-237).[6] Defendants did not challenge these

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[6] As discussed in Stewart's Administrative Appeal, Fleiss is an enrolled actuary, which requires rigorous training and examinations; and Fleiss's principal client is the Pension Benefit Guaranty Corporation--*the* governmental agency charged with protecting participants' interests in their employer-provided

(continued...)

points in the administrative proceedings or courts below.

The Fifth Circuit also (i) suggested that the SBC Plan and SBC Plan Rules (a separate document) read differently before 2004, and (ii) *assumed* that the offset to Stewart's CAM Benefit simply accounted for her prior AMPP lump sum distribution (A-3, last ¶). However, except for the Offsets added by the Amendment, the SBC Plan and Plan Rules read exactly the same before 2004 as after 2004 (and before the Amendment as after the Amendment). Thus, before the 4/27/04 Amendment, no provision of the SBC Plan or Plan Rules authorized the General Offset or Special Offset. Therefore, although this Petition assumes *an* offset may be applied against the CAM Benefit to account for the prior AMPP lump sum, such offset may not equal the General Offset or Special Offset, as they were added *retroactively* in violation of ERISA's anti-cutback rule and, further, exceeded the actuarial equivalent of Stewart's AMPP benefit in violation of ERISA's actuarial equivalence rule (discussed later in this Petition).

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[6](...continued)
pension benefits (*See* PX26 at A-231, 232).

Ultimately, the Fifth Circuit concluded that the General Offset could be deducted from Stewart's gross CAM Benefit, reasoning that it was actuarially equivalent to Stewart's AMPP lump sum (A-4, 5).[7] While irrelevant to the anti-cutback analysis, in the administrative proceedings and courts below, it was undisputed that the General Offset (like the Special Offset) exceeded the actuarial equivalent of Stewart's AMPP accrued benefit at every age before age 65.

As discussed, TR 1.411(d)-4 (A-36-40, quoted above) prohibits plans from adding new conditions to the receipt of benefits that have already accrued. Because the Amendment added the General and Special Offsets to the SBC Plan *retroactively* to dates *years before* the Amendment, and because the SBC Plan previously contained no offset *methodology*, the Amendment necessarily added new conditions to the receipt of accrued benefits, thereby violating ERISA's anti-cutback rule.

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[7] The Fifth Circuit glossed over any issues pertaining to the Special Offset, reasoning that it applied only when it would provide greater benefits than the General Offset (A-4).

C. The Fifth Circuit's Finding that Defendants Applied Offsets *Before* the Amendment Confirms the Anti-Cutback Violation and Eviscerates Defendants' Legal Theory.

Recognizing the futility of asserting the legal validity of any retroactive offset, defendants formulated a legal theory in the administrative proceedings and courts below that (i) directly conflicted with the unambiguous language of the Amendment, (ii) negated its expressed retroactive effect, and (iii) ignored numerous documents SBC delivered to participants that consistently contravened the factual premise of the theory. Specifically, defendants maintained that the AMPP merged into the SBC Plan on 12/31/04 and, prior to that merger, the CAM Benefit formula never included any Ameritech service or compensation (R96-2, CA488-491). Therefore, defendants concluded, any pre-Amendment offsets based on Ameritech service or compensation were unnecessary and *were not* applied before the merger. *Id.* Defendants added that the 4/27/04 Amendment merely "clarified" that an offset would apply *after* the 12/31/04 merger (R96-2, CA489).

These arguments were not only flawed and disingenuous in significant respects, they contradicted the plain, unambiguous language of the 4/27/04 Amendment, a document drafted by defendants. As an initial matter, the 4/27/04 Amendment was made *retroactively* effective to 9/28/01 for the General Offset and 1/1/03 for the Special Offset, and omitted any reference to the merger (PX7, A-61, 62). Obviously, if the Amendment had merely intended to "clarify"

offsets that would apply *after* the merger, it would have been made effective 12/31/04, the date of the merger, not years before.

Even more compelling, the signature page approving the Amendment states that the Amendment seeks to "clarify" the "current" offset formulas and to introduce a "new" Special Offset formula--not any offsets that might apply after the 12/31/04 merger (PX7, A-59). Indeed, two years earlier, in response to Stewart's questions about her 6/15/02 CAM estimates, SBC sent Stewart a letter stating that "Current Administrative practice is to offset the current benefit by any prior benefits received using the prior unreduced age 65 [AMPP] annuity" (PX14, A-83). These statements alone substantiate that, before the merger and Amendment, defendants *were* offsetting the CAM Benefit, and that the SBC Plan previously contained no offset methodology. Indeed, the Fifth Circuit concluded that SBC's communications to Stewart "prior to 2004 . . . expressly acknowledged an offset for her earlier lump sum payment" (A-3, 4). Thus, the Fifth Circuit found that SBC *had* applied offsets before the merger–a finding that was supported by *overwhelming* evidence.

Significantly, all pre-merger CAM estimates SBC issued to Stewart and other similarly-situated former Ameritech managers re-hired by SBC included in the calculus of the gross CAM Benefit the Ameritech service used to calculate their AMPP benefit and *some* Ameritech compensation, and then applied an offset to

account for their prior AMPP lump sum.[8] Not surprisingly, SBC *admitted* in the district court that it used this methodology in its pre-merger CAM estimates (R96-2, CA499).

Furthermore, the 2005 SMM pertaining to the merger emphasizes that the CAM Benefit formula did not change after the merger, and that the merger had *no effect* on the calculation of participants' benefits (PX12, A-70-71). Therefore, if the CAM Benefit formula included Ameritech service and *some* Ameritech compensation *after* the merger, as defendants conceded, it also included these components *before* the merger.

In fact, on 2/19/01 (nearly four years *before* the merger), SBC sent notices to Stewart and other similarly-situated former Ameritech managers who were outsourced to IBM Global and later re-hired by SBC, advising that (i) their "Net Credited Service" dates "remained" their Ameritech hire dates (10/18/71 in Stewart's case), and (ii) this was an "important factor" in determining their benefits (PX38, A-353-397). The message was clear: Their Ameritech service would be counted in calculating their SBC benefits,

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[8] *See, e.g.* 6/15/02 age 50 and age 55 CAM estimates for Stewart (PX13, A-74-75 and A-79-80); 4/22/04 age 50.9 CAM estimate for Stewart (R90, PX15, SR1151); 7/4/04 age 55, 60 and 65 CAM estimates for Stewart (R90, PX16, SR1153-1161); and collected affidavits and Net Credited Service Date notices issued to Stewart and eight other similarly-situated former Ameritech managers (PX38, A-353-397).

which all CAM estimates ultimately reflected--both before and after the merger.[9]

While defendants complained below that inclusion of the Ameritech service used to compute the AMPP lump sum in the CAM Benefit calculus would be tantamount to conferring double credit for that service, that clearly is not the case where an offset for the prior AMPP lump sum is applied–the methodology SBC *admittedly* utilized in all of its pre- and post-merger CAM estimates[10] [albeit overvaluing the AMPP benefit]. As the Fifth Circuit concluded, the Plan Rules permitted this methodology before 2004 and SBC applied this methodology before 2004 (i.e., before the merger)[11]; and defendants conceded that SBC utilized

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[9] *See again* Stewart's pre-merger CAM estimates cited at n. 8, and several of Stewart's post-merger CAM estimates (R90, PX17, SR1163-1171).

[10] *Id.* (admission at R96-2, CA499).

[11] *See* A-3, 4 ("[P]rior to 2004, Stewart's retirement plan contained various rules which expressly prohibited acknowledging any service at another company *without first accounting for any lump-sum payment that employee received.* Moreover, all communications Stewart points to from Appellees prior to 2004 either provided no calculation of her future benefits or *expressly acknowledged an offset for her earlier lump sum payment.* Therefore, we agree with the plan administrator's interpretation that these communications were consistent with the anticipated merger . . . , but that they did not demonstrate that

(continued...)

that identical methodology after the merger. Again, this Petition assumes that *an* offset may be utilized to account for the AMPP lump sum–but not the General Offset or Special Offset.

Finally, pre-merger SBC Plan Rule 2.68.8 (dated 1/31/02) states that "all" former and current employee service recognized under the AMPP must be treated as if it had always been service with SBC (PX5, A-52). The AMPP recognized *all* of Stewart's 24+ years of Ameritech service. *See* Stewart's Final AMPP Benefit Statement (PX2, A-45). Therefore, SBC was required to recognize Stewart's Ameritech service in calculating her gross CAM Benefit.

In response to Rule 2.68.8, defendants cited Rules 2.66.5 and 6.1.4(c), claiming they exclude service from a former company if the employee received a lump sum from that company *unless the employee repays the lump sum* (R96-2, CA488-489). But that is precisely the purpose of the SBC Offsets, albeit via monthly annuity deductions against the gross CAM Benefit annuity (although SBC here is attempting to recover *more* than the value of the AMPP lump sum by applying Offsets that exceed the actuarial equivalent). Moreover, all pre- and post-merger CAM estimates included Ameritech service in the calculus of the gross

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[11](...continued)
Appellees at any time promised Stewart double compensation for her Ameritech service.") (emphasis added).

CAM Benefit,[12] demonstrating that SBC did not deem the repayment Rules, which are not referenced in the SPD, an impediment to inclusion of Ameritech service in the gross CAM calculus. And because the SBC Plan Rules never changed, and defendants' legal theory concedes that they permit inclusion of Ameritech service *after* the merger, the SBC Plan Rules necessarily also permitted inclusion of Ameritech service *before* the merger.

In fact, lump sum repayment Rules 2.66.5 and 6.1.4(c) were void for impossibility of performance, as (i) the Plan prohibits the repayment of lump sums,[13] (ii) the Plan applies Texas law to the extent not preempted by ERISA,[14] and (iii) Texas courts void contract provisions that are impossible to perform.[15] Thus, at most, the SBC Plan contemplated a monthly deduction against the gross CAM Benefit annuity in the form of an annuity actuarially equivalent to the AMPP benefit *as of the participant's age at commencement of the CAM Benefit*. This Petition assumes and asserts that such actuarially equivalent offset would be lawful.[16]

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[12] *See again* n.9.

[13] SBC Plan §6.14.5, last sentence (PX3, A-50).

[14] SBC Plan §6.18 (PX3, A-51).

[15] *SCI Texas Funeral Servs. v. Hijar*, 214 S.W.3d 148, 156 (Tex. App. 2007) (also citing other cases).

[16] SBC also posited that Rule 3.3 prevents inclusion of service earned under a Former Affiliate Plan such as

(continued...)

Given the foregoing, the Fifth Circuit found that before the merger SBC included Ameritech service in the gross CAM Benefit and then applied an offset to account for the AMPP lump sum[17]; and defendants admit SBC applied that same methodology *after* the merger. Although the Fifth Circuit did not address defendants' contention that, pre-merger, the SBC Plan also did not recognize any of Stewart's Ameritech *compensation* in the calculation of the gross CAM Benefit, this aspect of defendants' legal theory was refuted by defendants' own admissions and other compelling evidence.

Significantly, the CAM Benefit formula expressly subjects the compensation component of the CAM Benefit calculus to "Special Rules" in §4.2.2(b) of the SBC Plan (PX6, A-54). Therefore, in response to Stewart's questions as to the methodology SBC used to compute her 6/15/02 CAM estimates, SBC quoted subparagraph 2 of §4.2.2(b) and explained that, under that provision, it was required to use and did use

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[16](...continued)
the AMPP (PX25 at A-165). But, Rule 3.3 states that it is "subject to the provisions of any applicable Interchange Agreement" (R90, PX5, SR979), and SBC's administrative denial of Stewart's claims states that Stewart is subject to an Interchange Agreement that *requires* recognition of her Ameritech Service (PX25 at A-162, 163). Although the denial then contends that Rule 3.3 is subject to lump sum repayment Rules 2.66.5 and 6.1.4(c), as just discussed, those Rules are void for impossibility of performance.

[17] *See again* n. 11.

Stewart's 1995 compensation [i.e., her compensation while still employed by Ameritech] for the 5-year CAM Averaging Period (PX14, A-82, 83). The Final Administrative Denial reiterates this explanation (PX32, A-307 at n.4, citing again §4.2.2(b) of the SBC Plan), and defendants acknowledged in the district court that Stewart's pre-merger CAM estimates included her Ameritech compensation in the calculus of her gross CAM Benefit (R96-2, CA499). Plainly, defendants' contention that, pre-merger, Ameritech *compensation* also was not included in the calculus of the gross CAM Benefit was nothing more than a red herring.

In conclusion, the Fifth Circuit held that, prior to the merger, SBC included Stewart's Ameritech service in the calculus of her gross CAM Benefit, and then applied an offset to account for her AMPP lump sum.[18] Still, it remains irrefutable that there was no offset *methodology* in the Plan until SBC adopted the 4/27/04 Amendment, which made the General and Special Offsets *retroactively* effective to dates *years before* the Amendment–a blatant violation of ERISA's anti-cutback rule (§204(g)) and enforcing TR 1.411(d)-4. Therefore, assuming *an* offset may be applied to account for the AMPP lump sum, ERISA's anti-cutback rule prohibits retroactive application of the General Offset or Special Offset. Rather, ERISA supplies the default methodology (actuarial equivalence) for situations like this where the plan contemplates an offset for a prior pension payment, but fails to state its offset methodology (*see* Part II below).

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[18] *See again* n. 11.

Congress enacted ERISA to protect the interests of participants in their employer-provided pension benefits. 29 U.S.C. §1001. To ensure that plan sponsors do not circumvent and flout ERISA's protections where the plan fails to state its offset *methodology*, it is crucial that this Court affirm the anti-cutback guidance and holdings set forth in TR 1.411(d)-4, by this Court in *Heinz*, by the Second Circuit in *Frommert*, and by the other Court of Appeals decisions cited herein, and hold that ERISA's anti-cutback rule and enforcing TR 1.411(d)-4 also apply to offsets intended to account for prior pension payments. Such a holding from this Court would encourage more precise drafting of plan offset provisions, which would, in turn, (i) make it easier for participants and plan administrators to ascertain the *lawful* net plan benefit after offset, and (ii) minimize disputes and litigation respecting such benefits, thereby ameliorating the strain on our already over-burdened courts. Most importantly, a holding that the anti-cutback rules apply to offset methodologies would ensure that participants who separate from employment, receive a pension payment, and subsequently return to work for their former employer will not have their future pension benefits reduced by an unexpected retroactively-adopted offset methodology--possibly one that results in paying back *more* than the value of the prior pension payment (as here).

II. REVIEW IS WARRANTED ON THE ACTUARIAL EQUIVALENCE ISSUE BECAUSE THE FIFTH CIRCUIT'S RULINGS CONFLICT WITH ERISA §204(c)(3), THE NINTH CIRCUIT'S HOLDINGS IN *MILLER V. XEROX CORP. RETIREMENT INCOME GUARANTEE PLAN,* AND THIS COURT'S RECENT OBSERVATIONS IN *CONKRIGHT*

Assuming an offset may be applied to account for the prior AMPP lump, the Fifth Circuit should have followed ERISA §204(c)(3), the Ninth Circuit's holding in *Miller v. Xerox Corp. Retirement Income Guarantee Plan*, 464 F.3d 871 (9th Cir. 2006), and this Court's recent observations in *Conkright v. Frommert*, 130 S. Ct. 1640 (2010), and applied an actuarial equivalence methodology. Indeed, the SBC Plan requires that it be administered in accordance with ERISA,[19] which mandates actuarial equivalence.

ERISA's actuarial equivalence rule, ERISA §204(c)(3), states that "in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age . . . the employee's accrued benefit . . . shall be the actuarial equivalent of such benefit or amount." 29 U.S.C. §1054(c)(3) (emphasis added). Thus, an offset for payment of a prior accrued benefit may not exceed the actuarial equivalent of that benefit, a principle strictly applied in *Miller*.

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[19] *See* SBC Plan §6.18, 6.20 and 9.1.4 (A-51).

Addressing a phantom offset similar to the Special Offset, the Ninth Circuit held that, pursuant to ERISA's actuarial equivalence rule, any offset that accounts for a prior distribution must be the actuarial equivalent of that distribution without "hypothetical" earnings. *Miller*, 464 F.3d at 874, 875, 878. Relying on that principle, it then found that Xerox's phantom offset overstated the value of plaintiffs' prior lump sum distributions by using "hypothetical" earnings and, therefore, violated ERISA's actuarial equivalence rule. *Id.*

This Court's recent comments in *Conkright* may also be instructive. In the course of addressing the standard of review to be applied by the district court on remand for an appropriate offset remedy, the Court cited *Miller* and suggested (but did not decide) that actuarial equivalence might be the appropriate remedy:

> The phantom account method having been exorcised from the Plan, the District Court on remand considered other approaches for adjusting respondents' present benefits in light of their past distributions. . . . The Plan Administrator submitted an affidavit proposing an approach that, like the phantom account method, accounted for the time value of the money that respondents had previously received. But unlike the phantom account method, the Plan Administrator's new approach did not calculate the present value of a past distribution based on events that

> occurred after the distribution was made. Instead, the new approach used an interest rate that was fixed at the time of the distribution, thereby calculating the current value of the distribution based on information that was known at the time of the distribution. . . . In similar litigation over the Plan, the Ninth Circuit also rejected the use of the phantom account method, but held that the Plan Administrator should utilize actuarial principles in accounting for rehired employees' past distributions –which would presumably include taking some cognizance of the time value of money.

Conkright v. Frommert, 130 S. Ct. 1640, 1645, 1651 (2010). In fact, plans routinely *expressly* require offsets to be the actuarial equivalent of the prior pension paid or payable under the plan or related plan.[20] Moreover,

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[20] *See, e.g.*, *Barney v. Masonite Corp.*, 2003 U.S. App. LEXIS 18043 *3 (9th Cir. Aug. 28, 2003) ("T]he offset provision . . . provides [that] 'the monthly equivalent of any retirement benefit . . . shall be reduced by the . . . Actuarial Equivalent of all benefits based on such Participant's Accrual Service and payable with respect to such Participant under any other defined plan . . . to which a controlled group member contributes'"); *Potter v. Eaton Corp.*, 1993 U.S. App. LEXIS 28960 *3-4 (9th Cir. Oct. 28, 1993) ([The plan] "provides that benefits 'shall be reduced' on an actuarially equivalent basis by benefits of a plan for hourly rate employees when they

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even where the plan does not explicitly state its offset methodology, actuarial equivalence is still the methodology typically employed.[21] Actuarial equivalence in the offset context serves the salutary purpose of ensuring that participants will not have their future benefits reduced by *more* than the value of their prior pension payment, a situation that results in a windfall to plan sponsors, as offsets effectively reduce the plan sponsor's funding obligations.

So what *is* required for actuarial equivalence? In his Report in the administrative proceedings (PX23, A-111-133), actuary Fleiss cited TR 1.401(a)(4)-12 (A-35) and considerable actuarial literature (most of it attached to his Report), all explaining that actuarial equivalence between or among benefits is determined

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[20](...continued)
cover the same years of employment."); *Quinn v. Burlington Northern Inc. Pension Plan*, 664 F.2d 675, 677-677 (8th Cir. 1981) ("the amount of monthly pension payable to a participant . . . shall be reduced by the actuarial equivalent of any vested benefit which such participant has received . . .".).

[21] *See Bratton v. Schlumberger Technology Corp. Pension Plan*, 2007 U.S. Dist. LEXIS 76562 (W.D. La. Oct. 12, 2007) (plan administrator determined that "plaintiff's future retirement benefits would be offset by the actuarial equivalent of the 25 payments received prior to his reinstatement."); and *Alfa Laval Inc. v. Nichols*, 2007 U.S. Dist. LEXIS 23159 *3 (E.D. Va. Mar. 29, 2007) (supplemental pension agreement required offset to be the actuarial equivalent).

using the *same* actuarial assumptions; that is, the *same* interest rate and mortality table. *See* 26 C.F.R. §1.401(a)(4)-12 ("**Actuarial Equivalent**. An amount or benefit is . . . actuarially equivalent to another amount or benefit at a given time if the actuarial present value of the two amounts or benefits (calculated using the *same* actuarial assumptions) at that time is the same.") (italics added); *Actuarial Standard of Practice No. 4* (PX23 A-118) ("Actuarial Equivalent. Of equal Actuarial Present Value, determined as of a given date with each value based on the *same set of Actuarial Assumptions*") (italics added); *Employee Benefit Plans: A Glossary of Terms* 3 (9th ed. 1997) (PX23, A-129-130) ("**Actuarial Equivalent** - If the present value of two series of payments is equal, taking into account a *given* interest rate and mortality according to a *given* table, the two series are said to be actuarially equivalent.") (italics added); and Bowers et al., *Actuarial Mathematics*, 2nd ed. (Schaumberg: Society of Actuaries, 1997); and Jordon, *Life Contingencies*, 2nd ed. (Chicago: Society of Actuaries, 1967).

In the administrative proceeding and courts below, defendants did not dispute that actuarial equivalence between or among benefits requires using the same interest rate and mortality table. Nor did they object to TR 1.401(a)(4)-12 (A-35) or any of the actuarial literature Fleiss cited.

A. It Was Undisputed that the Special Offset and General Offset Both Exceeded the Actuarial Equivalent of Stewart's AMPP Benefit.

As will now be discussed, the Special Offset and General Offset both exceeded the actuarial equivalent of Stewart's AMPP benefit. Because the Special Offset represents the more egregious violation, Stewart will address it first.

1. Special Offset

In the administrative proceedings, Fleiss documented that the SOIA Rate for calculating the Special Offset to be applied against Stewart's CAM Benefit equated to an average annual rate of **9.1229%** for the projection period through 12/31/03, and **8.5%** for the projection period thereafter *See* Fleiss Supplemental Information (PX24, A-140, last ¶). Fleiss further documented that Ameritech had used an overall rate of **4.137%** to calculate Stewart's age-65 AMPP annuity (PX24, A-139-140). Fleiss reached the obvious and indisputable conclusion that the SOIA Rates were "more than twice" the rate Ameritech had utilized to compute Stewart's AMPP accrued benefit (PX24, A-140 last ¶), thereby causing a violation of ERISA's actuarial equivalence rule (PX23, A-112-113).

Stewart's 6/14/05 CAM estimates highlight the actuarial equivalence problem inherent in the Special Offset formula, as they show a Special Offset annuity at *age 63* of **$3,900.40**/month (R90, PX17, SR1171)-- **$1,500/month** *more* than Stewart's actual *age-65* AMPP annuity of $2,400.61/month! (PX2, A-45). While

common sense and logic alone dictate that an actuarially equivalent AMPP annuity at any age *before* age 65 will be less than (not more than) the AMPP annuity *at* age 65 due to the longer stream of annuity payments, this conclusion is confirmed by Stewart's Final AMPP Benefit Statement, which shows an actuarially equivalent immediate AMPP annuity at Stewart's then age of 43 of $545.87/month (PX2, A-45).

In the administrative proceedings and courts below, defendants did not dispute that the SOIA Rates for calculating the Special Offset were **more than double** the rate Ameritech utilized to calculate Stewart's AMPP benefit. Likewise, defendants never challenged Stewart's or Fleiss's conclusions that application of the SOIA Rates produces an offset annuity that exceeds the actuarial equivalent of the age-65 AMPP annuity, thereby violating ERISA's actuarial equivalence rule.

2. General Offset

The General Offset also fails to utilize an actuarial equivalence methodology. As earlier noted, the General Offset annuity, by definition, is always the age-65 AMPP annuity, *regardless of the participant's age at benefit commencement.*[22] Thus, the General Offset assumes the age-65 AMPP annuity has attained its full age-65 value at every age *before* age 65, a virtual impossibility. While this alone demonstrates that the General Offset annuity exceeds the actuarial equivalent of the AMPP accrued benefit (the age-65 annuity) at every age *before* age 65, this determination was further established by Fleiss's calculations and other documents and information Stewart submitted in the administrative proceedings.

In her administrative appeal, Stewart submitted a chart that (i) summarized the data in the CAM estimates SBC provided, (ii) where the CAM estimate included only the net CAM Benefit under the General Offset or net CAM Benefit under the Special Offset (but not both), showed the missing net CAM Benefit amount, as calculated by actuary Fleiss, and (iii) showed the net CAM Benefit under a Special Offset

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[22] For documents confirming this, *see* 4/27/04 Amendment (PX7, A-61, 62); June 2004 SMM explaining the General and Special Offsets (PX10, A-67, referring to General Offset as "Current Offset"); Stewart's 6/15/02 and 6/24/04 CAM estimates (R90, PX13, SR1039; and R90, PX15 SR1151 line 1b); and 10/17/03 Power Point Presentation (R90, PX14 at SR1114).

annuity calculated by Fleiss using the *same* interest rate and mortality table Ameritech had utilized to calculate Stewart's age-65 AMPP annuity (*See* PX26, A-234-237).

As Stewart elucidated in her Administrative Appeal, the data in the chart revealed that when a Special Offset annuity is computed using the same interest rate and mortality table Ameritech utilized to compute the age-65 AMPP annuity, the net CAM Benefit will be larger at **every** age than under **either** the General Offset or Special Offset in the 4/27/04 Amendment (*See* PX26, A-237). Thus, an actuarially equivalent Special Offset annuity will always produce a greater net CAM Benefit than under the General Offset, in which case the General Offset would never apply to Leapfroggers like Stewart.[23] The crucial point, however, is that Fleiss's calculations demonstrated that both the General Offset and Special Offset exceeded the actuarial equivalent of Stewart's' age-65 AMPP annuity.

In the administrative proceedings and courts below, defendants did not dispute Fleiss's calculations or any of the other data in Stewart's chart. Nor did they disagree that an offset annuity calculated using the *same* interest rate and mortality table Ameritech utilized to calculate Stewart's age-65 AMPP annuity would produce a greater net CAM Benefit than under

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[23] Recall: Under the Amendment, Leapfroggers are entitled to the greater of the net CAM Benefit under the General Offset and net CAM Benefit under the Special Offset (PX7, A-62-64).

either the General Offset or Special Offset in the 4/27/04 Amendment. Finally, and perhaps most significantly, it is incontrovertible (and defendants did not refute) that the General Offset annuity is always the age-65 AMPP annuity *regardless of the participant's age at benefit commencement* and, therefore, exceeds the actuarial equivalent of the age-65 AMPP annuity at every benefit commencement age before 65.

Example General Offset calculations in the June 2004 SMM, reprinted below, establish that it is *impossible* to derive an actuarially equivalent offset annuity under the General Offset formula.

Current Age 65 Offset	
CAM Benefit age 65 monthly annuity	$2,030
Less Age 65 monthly annuity of prior lump sum	$2,000
Net monthly annuity	$30
Early retirement factor	0.700
Net CAM monthly annuity benefit payable at retirement	$21
Lump sum payable at retirement	$3,904

June 2004 SMM (PX10, A-67) (referring to General Offset as "Current Age 65 Offset").

As the example calculations show, an age-65 AMPP annuity of $2,000 is deducted from an age-65 CAM annuity of $2,030, leaving just $30 after this

offset. The $30 remaining is then reduced by an ERF (0.700) because the participant has not attained age 65. No part of this $30 comprised the AMPP benefit because the age-65 AMPP annuity was already fully deducted from the CAM annuity. Consequently, under the General Offset, the age-65 AMPP annuity can *never* be reduced to its actuarial equivalent.

B. The Fifth Circuit Sanctioned the Use of Offsets that Exceed the Actuarial Equivalent of the Prior Pension Payment.

In light of the foregoing, it was undisputed in the administrative proceedings and courts below that the General Offset annuity (like the Special Offset annuity) exceeded the actuarial equivalent of Stewart's age-65 AMPP annuity (her accrued benefit under the AMPP). The Fifth Circuit nonetheless held that the General and Special Offsets did not violate ERISA's actuarial equivalence rule, and offered the following faulty reasoning.

First, the Fifth Circuit stated that the Special Offset applies only when it provides greater benefits than the General Offset (A-4). While true, the point is irrelevant, as it was undisputed that *both* Offsets exceeded the actuarial equivalent of Stewart's age-65 AMPP annuity.

Next, the Fifth Circuit reasoned that the General Offset merely deducted from Stewart's CAM Benefit an annuity amount equivalent to Stewart's AMPP lump sum (A-4). Stewart agrees that her age-65 AMPP annuity and her AMPP lump sum were

actuarial equivalents of each other. But that just proves Stewart's point that, in order to *receive* the age-65 AMPP annuity, she would have to wait until she attained age 65. Obviously, if Stewart had elected to receive an actuarially equivalent AMPP annuity *before* age 65, it would have been less than the age-65 AMPP annuity due to the longer stream of annuity payments. *See again* AMPP Final Benefit Statement for Stewart (PX2, A-45) (showing actuarially equivalent immediate annuity of $545.87/month at Stewart's then age of 43). Pursuant to the Amendment, the General Offset annuity is *always* the age-65 AMPP annuity *regardless of the participant's age at benefit commencement* and, thus, exceeds the actuarial equivalent of the AMPP accrued benefit at every age before 65.

Ostensibly recognizing actuarial equivalence principles, the Fifth Circuit then stated that "this [age-65 AMPP] annuity offset is itself reduced if Appellant chooses to retire before age 65." (A-5). This statement was patently erroneous, and reveals that the Fifth Circuit did not understand the General Offset formula. As the example calculations in the June 2004 SMM show, the General Offset annuity is *always* the age-65 AMPP annuity, which is *never* reduced, much less by any actuarial equivalence assumptions. The only annuity that *is* reduced by the ERF is the tiny CAM annuity piece remaining *after* the age-65 AMPP annuity has been fully deducted from the gross CAM annuity.

Finally, in a footnote, the Fifth Circuit stated that the General Offset was the "same amount that Stewart herself rejected in favor of an immediate lump sum payment, demonstrating that Stewart placed

greater value on the lump sum than any corresponding future annuity" (A-5 at n.2). Stewart's preference for the lump sum in 1996 is irrelevant. What *is* relevant is that Stewart documented that both the General Offset and Special Offset exceeded the actuarial equivalent of her AMPP benefit, and that defendants did not dispute this.

In summary, the Fifth Circuit glossed over any deficiencies in the Special Offset and, in holding that the General and Special Offsets did not violate ERISA's actuarial equivalence rule, mistakenly concluded that the General Offset annuity *was* actuarially reduced, even though it was *undisputed* that the General Offset annuity is never reduced and that both Offsets exceeded the actuarial equivalent of Stewart's AMPP benefit. The Fifth Circuit's deviation from the *actual* General Offset formula in reaching its erroneous conclusion and its failure to apply the undisputed facts to its analysis of the General Offset were clearly a departure from the usual course of judicial proceeding as to alone require an exercise of this Court's supervisory powers.

Further, the Fifth Circuit's rulings on the actuarial equivalence issue conflict with (i) ERISA §204(c)(3), ERISA's actuarial equivalence rule, (ii) the Ninth Circuit's holding in *Miller* that offsets for prior pension distributions may not exceed the actuarial equivalent of such distributions, and (iii) this Court's observations in *Conkright* that actuarial equivalence may be the appropriate remedy where the plan contemplates an offset, but fails to state its offset *methodology*. The Fifth Circuit's endorsement of the General Offset formula, if allowed to stand, sets a bad

precedent, as it effectively sanctions offsets that exceed the actuarial equivalent of the prior pension payment, thereby devaluing participants' pension benefits, and conferring a windfall on plan sponsors whose funding obligations are concomitantly reduced by the excessive offset. At the very least, the conflict with the Ninth Circuit must be resolved, as whether an offset for a prior pension payment may *exceed* its actuarial equivalent should not depend on the Circuit where such issue may be litigated.

CONCLUSION

As evidenced by the numerous amicus briefs filed in this Court in the recent *Conkright* offset case, there is tremendous national interest in the lawful offset methodology that may apply where a pension plan contemplates an offset to account for a prior pension payment, but fails to state its offset *methodology*. This Petition asks the Court to decide (i) whether such plans may be retroactively amended to add whatever offset methodology the plan sponsor chooses and, if not, (ii) whether the maximum offset in such case is limited to the actuarial equivalent of the prior pension payment. These questions require consideration of ERISA's anti-cutback rule and actuarial equivalence rule and are clearly important questions of federal law that should be settled by this Court. Wherefore, Stewart prays that this Court grant her Petition.

Respectfully submitted,

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September 15, 2010

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Fifth Circuit Decision Affirming Summary Judgment for Defendants, 2010 U.S. App. LEXIS 12393 (filed 6/17/2010) (unpub)

KATHLEEN A. STEWART, Individually and on Behalf of All Others Similarly Situated, Plaintiff - Appellant v. AT&T, formerly known as SBC Communications Inc; AT&T PENSION BENEFIT PLAN-NON BARGAINED PROGRAM, formerly known as SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program, Defendants - Appellees

No. 09-50892

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

2010 U.S. App. LEXIS 12393

June 17, 2010, Filed

NOTICE: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

Appeal from the United States District Court for the Western District of Texas. USDC No. 5:07-CV-318.

DISPOSITION: AFFIRMED.

COUNSEL: For KATHLEEN A. STEWART, Individually and on Behalf of All Others Similarly Situated, Plaintiff - Appellant: Eva Teresa Cantarella, Robert Paul Geller, Bradley Joel Schram, Hertz Schram, P.C., Bloomfield Hills, MI.

For AT&T, formerly known as SBC Communications Inc, AT&T PENSION BENEFIT PLAN-NON BARGAINED PROGRAM, formerly known as SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program, Defendants - Appellees: Jeffrey David Wohl, Paul, Regan A.W. Herald, Hastings, Janofsky & Walker, L.L.P., San Francisco, CA; Javier Aguilar, General Attorney, Geoffrey Neal Amsel, AT&T Services, Inc., Dallas, TX.

JUDGES: Before REAVLEY, WIENER, and SOUTHWICK, Circuit Judges.

OPINION

PER CURIAM: *

> * Pursuant to *5TH CIR. R. 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIR. R. 47.5.4.*

This is an appeal from the district court's order granting summary judgment. Appellant Kathleen Stewart claims her retirement plan with Appellees violates the Employment Retirement Income Security Act of 1974 ("ERISA"), **[*2]** *29 U.S.C. § 1001, et seq.* The district court held that the plan administrator and subsequent review committee did not abuse their

discretion by denying Appellant's ERISA claims. We AFFIRM.

We review a district court's grant of summary judgment in an ERISA case de novo, applying the same standard as the district court. *Schexnayder v. Hartford Life & Accident Ins. Co., 600 F.3d 465, 468 (5th Cir. 2010).* Because the retirement plan confers discretion on the plan administrator to construe the plan's terms, we review the administrator's construction of the plan for abuse of discretion. *See Wade v. Hewlett-Packard Dev. Co. LP Short Term Disability Plan, 493 F.3d 533, 537-38 (5th Cir. 2007)* (citation omitted).

Stewart first argues that the district court erred by dismissing her claim that the 2004 Amendment to the retirement plan violates ERISA's anti-cutback rule, *29 U.S.C. § 1054(g).* Specifically, Stewart argues that prior to 2004, her retirement plan had entitled her to full benefits for the twenty-five years of service she provided at Ameritech Services, Inc. However, Stewart argues that the 2004 Amendment retroactively cut back those benefits by an amount equal to the lump sum she had **[*3]** received as payment for her retirement benefits at Ameritech. As proof of this cutback, Stewart points to various communications from Appellees prior to 2004 which stated that Appellees would recognize her years at Ameritech.

However, prior to 2004, Stewart's retirement plan contained various rules which expressly prohibited acknowledging any service at another company without first accounting for any lump-sum payment that employee received. Moreover, all communications Stewart points to from Appellees prior to 2004 either provided no calculation of her future

benefits or expressly acknowledged an offset for her earlier lump sum payment. Therefore, we agree with the plan administrator's interpretation that these communications were consistent with the anticipated merger of Appellee AT&T and Ameritech, but that they did not demonstrate that Appellees at any time promised to award Stewart double compensation for her Ameritech service. As there was no retroactive reduction of benefits, no illegal cutback occurred.

> 1 Appellant argues these rules are "void for impossibility" because they allow for certain classes of employees to pay back their lump sum payments but do not allow Stewart to **[*4]** do so. However, the fact that some employees may pay back their lump sum and others cannot do not void the rules. The plan administrator interpreted the rules as designed to prevent employees from seeking double-compensation under the plan, not as a bargained-for procedure by which all employees may synchronize their retirement benefits into one payment. Accordingly, whether Appellant can repay her lump sum is irrelevant.

Stewart next argues that the district court erred in dismissing her claims that the 2004 Amendment's General Offset and Special Offset violate ERISA's anti-forfeiture rule, *29 U.S.C.§ 1053(a)*, and ERISA's actuarial equivalence rule, *id. § 1054(c)(3)*. We disagree. By its own terms, the Special Offset only becomes relevant when it provides greater benefits than the General Offset. Meanwhile, the General Offset does no more than deduct from Stewart's benefits an annuity amount equivalent to the lump sum she had received as payment for her Ameritech

service. [2] This annuity offset is itself reduced if Appellant chooses to retire before age 65. As the General Offset accounts both for Stewart's prior lump-sum payment and the potential for her early retirement, we find that **[*5]** the plan neither forfeits Appellant's right to her normal retirement benefits, nor does it violate ERISA's actuarial equivalence rule.

2 Indeed, the offset amount is the same amount that Stewart herself rejected in favor of an immediate lump-sum payment when she left Ameritech, demonstrating that Stewart placed greater value on the lump sum than any corresponding future annuity.

3 Appellant also argues that the district court erred by dismissing her motion for class certification as untimely. However, we do not need to reach this issue. While we agree with the Appellant's interpretation of the term "pleading," any error by the district court on this issue is rendered moot by the court's resolution of Appellant's claims on the merits.

AFFIRMED.

District Court Order Granting Summary Judgment for Defendants (filed 9/09/09) (unpub)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

KATHLEEN A. STEWART,
Plaintiff,
v. NO. SA-07-CV-318-H
AT&T INC. and AT&T PENSION
BENEFIT PLAN,
Defendants.

ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

This is a civil action alleging violations of the Employee Retirement and Income Security Act (ERISA). All parties have filed motions for summary judgment. The Court finds that thee is no genuine issue of material fact and that Defendants are entitled to judgment in their favor as a matter of law.

I. INTRODUCTION

Plaintiff was employed by Ameritech Services, Inc. ("Ameritech") from 1971 until June 30, 1986. As a result, Plaintiff was a participant in the ameritech management Pension Plan ("AMPP"). When she terminated her employment, Plaintiff was offered the choice of receiving a distribution from the AMPP of her accrued benefit either as a lump sum in the amount of $110,450.36, or in the form of a monthly annuity payable at age 65 in the amount of $2,400.61. She chose to receive the lump sum.

On October 8, 1999, SBC Communications, Inc., now known as AT&T Inc., acquired Ameritech. On January 1, 2001, Ameritech became a participating company in the AT&T Pension Benefit Plan Non-Bargained Program (the "Plan"). On January 31, 2001, a subsidiary of AT&T re-hired Plaintiff. Plaintiff became a participant in the Plan on this date as a result of her employment. Plaintiff's benefits under the Plan were determined using the Updated Career Average Minimum ("CAM") formula.

On April 27, 2004, AT&T adopted an amendment to the Plan (the "Amendment") that clarified what would happen once the Plan and the AMPP were merged. Specifically, the Amendment detailed the offset that would be applied to Plaintiff and similarly situated participants who had received a prior distribution from the AMPP. The AMPP was merged into the Plan on December 31, 2004.

On June 15, 2002, Plaintiff began receiving estimates of her CAM benefit payable under the Plan. These estimates reduced the amount otherwise payable under the Plan by the amount of the benefit she had already received from the AMPP. Plaintiff disagreed with these estimates and pursued legal administrative remedies based on her complaints. The Benefit Plan Committee (the "BPC") denied Plaintiff's claims. This Court must now review the BPC's findings.

II. APPLICABLE LAW

When a plan grants an administrator discretion in benefits determinations, "the district court [is] required to apply an abuse of discretion standard." **See Sanders v. Unum Life Ins. Co. Of Am.**, 553 F.3d

922, 925 (5th Cir. 2008) (citation omitted). The abuse of discretion standard requires that a plan administrator's decision will prevail if it is supported by substantial evidence and is not arbitrary and capricious. **Id.**

A determination of whether a plan administrator has acted arbitrarily and capriciously is a two-part process. **Crowell v. Shell Oil Co.**, 541 F.3d 295, 312 (5th Cir. 2008) (citation omitted). The first part is to determine whether the administrator's determination was "legally correct." **Id.** (citation omitted). If the decision was legally correct, the inquiry is over. **Id.** If the decision was not legally correct, the court determines whether there was an abuse of discretion in the denial of benefits. **Id.**

To determine whether a plan administrator's decision was legally correct, a court must consider: (1) whether the administrator has given the plan a uniform construction, (2) whether the interpretation is consistent with a fair reading of the plan, and (3) any unanticipated costs resulting from different interpretations of the plan. **Threadgill v. Prudential Sec. Group**, 145 F.3d 286, 292-93 (5th Cir. 1998); **Crowell**, 541 F.3d at 312.

If the court concludes that the decision was not legally correct, the important factors in determining whether a plan administrator has abused its discretion are: (1) the internal consistency of the plan under the administrator's interpretation, (2) any relevant regulations formulated by the appropriate administrative agencies, and (3) the factual background of the determination and any inferences of lack of good faith. **Threadgill**, 145 F.3d at 293.

III. ANALYSIS

A. Standard of Review

Plaintiff implies in her motion that the BPC did not exercise discretion. She cites case law stating that if a plan administrator does not exercise discretion in interpreting the plan, then this Court must review his findings de novo. (Pl.'s Mot. At 4).

This Court already determined in Plaintiff's previous suit that the AMPP grants the plan administrator discretion in determining claims for benefits. **See Stewart v. AT&T, Inc.**, SA-08-CV-272, Doc. 102, at 3. Such discretion was exercised in this case. The plan administrator determined Plaintiff's entitlement to benefits and interpreted the Plan in light of Plaintiff's administrative appeal. Thus, this Court is required to apply the "abuse of discretion" standard.

B. Count I

In Count I of her complaint, Plaintiff contends that the benefit she accrued prior to the Amendment was forfeited when the Amendment was applied retroactively. She contends that the Amendment, which confirms that prior Plan benefits should be taken into account to reduce benefits under the Plan that are based on the same years of service, violates the Plan and the anti-cutback rule embodied in ERISA § 204(g).

Plaintiff's first contention in Count I is that prior to the Amendment, the Plan did not allow for any offset against the CAM based on a prior distribution for the same years of service. This argument was summarily rejected by the BPC. The BPC found that the Plan was

designed to avoid double counting of applicable service and paying of a duplicative benefit, even before the Amendment. (Final Denial, Doc. 86, Ex. 2, at 1-2, 8).

The BPC determined that the only circumstance that permitted Plaintiff's service and compensation at Ameritech to be considered and used to calculate her CAM benefit was the merger of the AMPP into the Plan. **Id.** at 5. Prior to the merger, the Plan did not require recognition of Plaintiff's Ameritech service or compensation. **Id.** The merger occurred in December of 2004. As a result of the merger, Plaintiff's compensation and service while employed by Ameritech became compensation and service under the Plan. as a necessary corollary, the benefit Plaintiff received from the AMPP likewise became a benefit paid by the Plan. The BPC concluded that the lump sum Plaintiff received from the AMPP satisfied the benefit obligations under the Plan that was calculated based on Stewart's employment with Ameritech. **Id.** at 11.

Plaintiff's second contention with respect to Count I is that the retroactive application of the Amendment reduced her accrued CAM benefit. The BPC rejected this claim. As noted above, the BPC found that Plaintiff accrued no CAM benefit prior to the merger of the Plans. The Amendment was implemented prior to the merger. Thus, the BPC concluded that the Amendment simply clarified that Plaintiff's accrued benefit equaled the CAM formula minus distributions received for the same service. **Id.** at 14. As the BPC noted, "the Amendment could not take away benefits based on Plaintiff's years at Ameritech because the Plan terms did not provide her any such benefits prior to the merger." **Id.** at 11. Thus, there was no forfeiture of accrued benefits.

In her motion for summary judgment, Plaintiff never addresses the BPC's conclusions. Plaintiff simply continues to assert the exact same arguments that the BPC found so unpersuasive. Furthermore, she never alleges that the BPC abused its discretion in denying Count I.

This Court concludes that the BPC's decision was legally proper. The BPC gave the Plan a uniform construction. The BPC did not interpret the relevant provisions in such a way as to contradict other portions of the Plan. Instead, the BPC evaluated the Plan as a whole when deciding Plaintiff's claims. The BPC's decision is inconsistent with a fair reading of the Plan. Had the BPC adopted Plaintiff's interpretation of the Plan, it would mean that participants who quit, receive a lump sum, and then return to work are entitled to a larger benefit than those employees who never terminated their employment. Furthermore, the BPC was correct in determining that a fair reading of the Plan prohibits duplicative benefits. **See generally** Plan Rules 2.66.4, 6.1.4(c), and 3.3.

This Court agrees with the BPC's ultimate conclusion that Plaintiff is making a claim for "double benefits, double compensation, and double service." **Id.** at 20. Had Plaintiff succeeded on Count I, she would have been awarded a double recovery windfall- "a result abhorred by ERISA." **Harms v. Caveham Forest Indus., Inc.**, 984 F.2d 686, 693 (5th Cir. 1993). Therefore, Plaintiff's interpretation of the Plan would certainly lead to unanticipated costs.

C. Counts II and III

In count I, Plaintiff contends that no offset may be applied to her benefit. Counts II and III contend, as an alternative, that the Special Offset is too large, and results in a benefit to Plaintiff that is too small.

In Count II, Plaintiff contends that the Special Offset Interest Adjustment Rates ("SOIA Rates") are too high, causing a partial forfeiture of her benefits. Plaintiff believes that this forfeiture violates ERISA § 204(c)(3) and Treasury Regulations 1.411(a)-4.

As Plaintiff has repeatedly acknowledged, the Special Offset is applied only when it is smaller- that is, when it produces a greater benefit- than the General Offset. The General Offset is the AMPP benefit at age 65 that Plaintiff traded for her lump sum benefit. The General Offset reduces Plaintiff's monthly annuity at age 65 by $2,400.61- the amount that she could have elected to receive instead of the lump sum. Because the Special Offset is less favorable to Plaintiff than the General Offset, it would not be used. Significantly, Plaintiff has never alleged that the General Offset is too large.

In light of these facts, the BPC found that Count II had no merit. **Id.** at 2. If the Special Offset is only used when it would produce a greater benefit than the General Offset, and Plaintiff never contends that the General Offset results in a forfeiture of benefits, how could the Special Offset result in a forfeiture? The BPC found conclusively that the General Offset is proper, and Plaintiff never challenged this conclusion. **Id.** at 24-15.

Since the BPC found that the General Offset is proper, Count III was also denied. Count III states that the SOIA rates violate the actuarial-equivalence

provisions of ERISA § 204(c)(3) and Internal Revenue Code § 411(c)(3). However, as previously discussed, the SOIA rate would only be applied if it created a smaller offset than the General Offset.

Furthermore, the BPC found that §204(c)(3) simply requires that the benefit paid to Plaintiff at an early retirement date be no less than an actuarially equivalent amount to the accrued benefit at age 65. **Id.** at 25-26. It does not require that the offset be actuarially equivalent. **Id.** Plaintiff made no claim that her early retirement benefit is less than actuarially equivalent to her annuity benefit at age 65, and the BPC found that such a claim would be frivolous. **Id.** at 26.

Plaintiff never asserts that the BPC abused its discretion. Furthermore, Plaintiff never responds to or refutes the conclusions made by the BPC. This Court finds that the BPC's decision denying Counts II and III was legally correct.

The BPC gave the Plan a uniform construction that is consistent with a fair reading. This Court agrees with the BPC's conclusion that Plaintiff "consistently ignores relevant provisions of the Plan" and argues for interpretations that are "erroneous and untrue." **Id.** at 6, 8. The relevant portion of the Plan states that "notwithstanding anything in the Plan to the contrary, a Special Offset Participant shall be entitled to the larger of his pension benefit calculated under otherwise applicable provisions of this Plan...." (Pl.'s Mot, Ex. 7). In light of the clear language of the Special Offset provision, the BPC's construction of the provision was entirely proper.

IV. CONCLUSION

Ultimately, Plaintiff is unable to show that there is a genuine issue as to any material fact. Every argument presented in Plaintiff's motion for summary judgment was summarily rejected by the BPC. This Court is required to uphold the BPC's determination unless there was an abuse of discretion. Plaintiff never provides any argument or evidence that the BPC's determination was legally incorrect, much less an abuse of discretion.

It is therefore ORDERED that Defendants' motion for summary judgment be, and it is hereby, GRANTED.

It is further ORDERED that the Plaintiff's motion for summary judgment be, and it is hereby, DENIED.

It is further ORDERED that judgment be, and it is hereby, ENTERED in favor of Defendants, and that the Plaintiff take nothing by her suit.

SIGNED AND ENTERED this 4th day of September, 2009.

HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE

District Court Judgment Respecting Its Summary Judgment Order (filed 9/09/09) (unpub)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

KATHLEEN A. STEWART,
Plaintiff,
v. NO. SA-07-CV-318-H
AT&T INC. and AT&T PENSION
BENEFIT PLAN,
Defendants.

JUDGMENT

In accordance with the order regarding cross-motions for summary judgment this day entered in the above-styled and numbered cause,

It is ORDERED, ADJUDGED, and DECREED that judgment be, and it is hereby, ENTERED in favor of Defendants, and that Plaintiff take nothing by her suit.

It is further ORDERED, ADJUDGED, and DECREED that Plaintiff pay the costs of suit herein incurred, for which let execution issue.

SIGNED AND ENTERED THIS 4th day of September 2009.

HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE

District Court Order Denying as Untimely Stewart's Motion for Class Certification (filed 8/06/09) (unpub)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

KATHLEEN A. STEWART,
Plaintiff,
v. NO. SA-07-CV-318-H
AT&T INC. and AT&T PENSION BENEFIT PLAN,
Defendants.

ORDER REGARDING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

This is a civil action regarding alleged violation of the Employee Retirement and Income Security Act (ERISA). Plaintiff alleges that Defendants violated ERISA's anti-cutback rule by wrongfully offsetting her pension. She further alleges that Defendants overstated the value of her Ameritech management Pension Plan, thereby causing her retirement benefit to be undervalued in violation of ERISA. Plaintiff seeks certification of two classes: the Global Class and the Leapfrog Subclass.

Pursuant to Local Rule CV-23, a motion for class certification is due within thirty days after any defendant's first pleading. Failure to timely file a motion for class certification constitutes a waiver of the request for a class action. **Local Court Rule CV-23.** Plaintiff filed the present action on November 30, 2006, and Defendants' first pleading was filed shortly thereafter. Plaintiff's request for class certification was

not filed until July 29, 2009. Therefore, Plaintiff's request for class certification is untimely and her request for a class action is deemed waived.

It is therefore ORDERED that Plaintiff's Motion for Class Certification be, and it is hereby, DENIED.

SIGNED AND ENTERED THIS 5th day of August 2009.

HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE

District Court Order Denying as Moot Stewart's Motion for Reconsideration of the Order Denying as Untimely Her Motion for Class Certification (filed 9/09/09) (unpub)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

KATHLEEN A. STEWART,
Plaintiff,
v. NO. SA-07-CV-318-H
AT&T INC. and AT&T PENSION BENEFIT PLAN,
Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On August 6, 2009, this Court entered an order denying the Plaintiff's motion for class certification. The Plaintiff has filed a motion for reconsideration of that order. However, on September 4, 2009, the Court entered a judgment in favor of the Defendants with respect to all claims asserted by the Plaintiff. Therefore, the motion for reconsideration is moot.

It therefore ORDERED that the Plaintiff's motion for reconsideration of the order denying class certification be, and it is hereby, DENIED as moot.

SIGNED AND ENTERED THIS 8th day of September 2009.

HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE

ERISA STATUTES

29 U.S.C. §1022 [ERISA §102]

§ 1022. Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b) [29 USCS § 1024(b)]. The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1) [29 USCS § 1024(b)(1)].

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 733(a)(1) [29 USCS § 1191b(a)(1)]), whether a health insurance issuer (as defined in section 733(b)(2) [29 USCS § 1191b(b)(2)]) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles and addresses of any

trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this Act and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 733(a)(1) [29 USCS § 1191b(a)(1)]), the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act [29 USCS § 1133]), and if the employer so elects for purposes of complying with section 701(f)(3)(B)(i) [29 USCS § 1181(f)(3)(B)(i)], the model notice applicable to the State in which the participants and beneficiaries reside.

29 U.S.C. §1054(c)(3) [ERISA §204(c)(3)]

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(emphasis added)

29 U.S.C. §1054(g) [ERISA §204(g)]

(g) Decrease of accrued benefits through amendment of plan.

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(d)(2) or 4281 [29 USCS § 1082(d)(2) or 1441].

(2) For purposes of paragraph (1), a plan amendment which has the effect of--

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the

preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

* * *

29 U.S.C. §1054(h) [ERISA §204(h)]

(h) Notice of significant reduction in benefit accruals.

(1) An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. . . .

(3) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(6) (A) In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable pension plan shall be applied as if such plan amendment entitled all applicable individuals to the greater of–

(i) the benefits to which they would have been entitled without regard to such amendment, or

(ii) the benefits under the plan with regard to such amendment.

(B) For purposes of subparagraph (A), there is an egregious failure to meet the requirements of this subsection if such failure is within the control of the plan sponsor and is–

(i) an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet the requirements of this subsection),

(ii) a failure to provide most of the individuals with most of the information they are entitled to receive under this subsection, or

(iii) a failure which is determined to be egregious

under regulations prescribed by the Secretary of the Treasury.

(7) The Secretary of the Treasury may by regulations allow any notice under this subsection to be provided by using new technologies. (8) For purposes of this subsection–

(A) The term "applicable individual" means, with respect to any plan amendment–

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term "applicable pension plan" means–

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986 [26 USCS § 412].

(9) For purposes of this subsection, a plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of reducing the rate of future benefit accrual.

(emphasis added).

29 U.S.C. §1104(a)(1) [ERISA §404(a)(1)]

(a) Prudent man standard of care.

(1) Subject to sections 403(c) and (d), 4042, and 4044 [29 USCS §§ 1103(c), (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and–

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

29 U.S.C. §1132(a), (e) [ERISA §502(a), (e)]

(a) Persons empowered to bring a civil action

A civil action may be brought--

(1) by a participant or beneficiary–

* * *

(B) to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

* * *

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

* * *

29 U.S.C. §1133 [ERISA §503]

§ 1133. Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall--

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

INTERNAL REVENUE CODE STATUTES

26 U.S.C. §401(a)(25)

(25) Requirement that actuarial assumptions be specified. A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

26 U.S.C. §411(d)(6)

(6) Accrued benefit not to be decreased by amendment.--

(A) In general.--A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments.--For purposes of subparagraph (A), a plan amendment which has the effect of--

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before

the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

* * *

DEPARTMENT OF LABOR REGULATIONS

29 C.F.R. §2520.102-2(a), (b)

§ 2520.102-2 Style and format of summary plan description.

(a) Method of presentation. The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents.

(b) General format. The format of the summary plan description must not have the effect to misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the

plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

29 C.F.R. §2520.102-3(l)

§2520.102-3 Contents of summary plan description.

Section 102 of the Act specifies information that must be included in the summary plan description. The summary plan description must accurately reflect the contents of the plans as of the date not earlier than 120 days prior to the date such summary plan description is disclosed. The following information shall be included in the summary plan description of both employee welfare benefit plans and employee pension benefit plans, except as stated otherwise in paragraphs (j) through (n):

* * *

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan

sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination. Plans also shall include a summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary, or on an individual account thereof, the payment of which is a condition to the receipt of benefits under the plan. The foregoing summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102-2(b).

29 C.F.R. §2560.503-1(g), (j)

(g) Manner and content of notification of benefit determination. (1) Except as provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant --

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits . . .

* * *

(j) Manner and content of notification of benefit determination on review. The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant --

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and

(5) In the case of a group health plan or a plan providing disability benefits . . .

TREASURY REGULATIONS

26 C.F.R. §1.401(a)(4)-12

Actuarial Equivalent. An amount or benefit is the actuarial equivalent of, or is actuarially equivalent to, another amount or benefit at a given time if the actuarial present value of the two amounts or benefits (calculated using the same actuarial assumptions) at that time is the same.

26 C.F.R. § 1.411(a)-4

§ 1.411(a)-4 Forfeitures, suspensions, etc.

(a) Nonforfeitability. Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time. Certain adjustments to plan benefits such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable.

* * *

(emphasis added)

26 C.F.R. §1.411(d)-4, Q&As 4, 5 & 7

§ 1.411(d)-4 Section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits.

Q-1: What are "section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits"?

A-1: (a) In general. **The term "section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit" includes any benefit that is described in one or more of the following categories –**

(1) Benefits described in section 411(d)(6)(A) [26 USCS § 411(d)(6)(A)] {i.e. "accrued benefits"},

(2) Early retirement benefits (as defined in § 1.411(d)-3(g)(6)(i)) and retirement-type subsidies (as defined in § 1.411(d)-3(g)(6)(iv)), and

(3) Optional forms of benefit described in section 411(d)(6)(B)(ii) [26 USCS § 411(d)(6)(B)(ii)].

Such benefits, to the extent they have accrued, are subject to the protection of section 411(d)(6) [26 USCS § 411(d)(6)] and, where applicable, the definitely determinable requirement of section 401(a) [26 USCS § 401(a)] (including section 401(a)(25) [26 USCS § 401(a)(25)]) and cannot, therefore, be reduced, eliminated, or made subject to employer discretion except to the extent permitted by regulations.

* * *

Q-2: To what extent may section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits under a plan be reduced or eliminated?

A-2: (a) Reduction or elimination of section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits -- (1) In general. **A plan is not permitted to be amended to eliminate or reduce a section 411(d)(6) [26 USCS**

§ 411(d)(6)] protected benefit that has already accrued, except as provided in § 1.411(d)-3 or this section. This is generally the case even if such elimination or reduction is contingent upon the employee's consent. However, a plan may be amended to eliminate or reduce section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits with respect to benefits not yet accrued as of the later of the amendment's adoption date or effective date without violating section 411(d)(6) [26 USCS § 411(d)(6)].

* * *

Q-4: May a plan provide that the employer may, through the exercise of discretion, deny a participant a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit for which the participant is otherwise eligible?

A-4: (a) In general. Except as provided in paragraph (d) of Q&A-2 of this section with respect to certain employee stock ownership plans, **a plan that permits the employer, either directly or indirectly, through the exercise of discretion, to deny a participant a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit provided under the plan for which the participant is otherwise eligible (but for the employer's exercise of discretion) violates the requirements of section 411(d)(6) [26 USCS § 411(d)(6)].** A plan provision that makes a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit available only to those employees as the employer may designate is within the scope of this prohibition. Thus, for example, a plan provision under which only employees who are designated by the employer are eligible to receive a subsidized early retirement benefit constitutes an impermissible provision under section 411(d)(6) [26 USCS § 411(d)(6)]. **In addition, a pension plan that**

permits employer discretion to deny the availability of a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit violates the definitely determinable requirement of section 401(a) [26 USCS § 401(a)], including section 401(a)(25) [26 USCS § 401(a)(25)]. See § 1.401-1(b)(1)(i). This is the result even if the plan specifically limits the employer's discretion to choosing among section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits, including optional forms of benefit, that are actuarially equivalent. In addition, the provisions of sections 411(a)(11) and 417(e) [26 USCS §§ 411(a)(11) and 417(e)] that allow a plan to make involuntary distributions of certain amounts are not excepted from this limitation on employer discretion. Thus, for example, a plan may not permit employer discretion with respect to whether benefits will be distributed involuntarily in the event that the present value of the employee's benefit is not more than the cash-out limit in effect under § 1.411(a)-11(c)(3)(ii) within the meaning of sections 411(a)(11) and 417(e) [26 USCS §§ 411(a)(11) and 417(e)]. (An exception is provided for such provisions with respect to the nondiscrimination requirements of section 401(a)(4) [26 USCS § 401(a)(4)]. See § 1.401(a)(4)-4(b)(2)(ii)(C).)

(b) Exception for administrative discretion. A plan may permit limited discretion with respect to the ministerial or mechanical administration of the plan, including the application of objective plan criteria specifically set forth in the plan. Such plan provisions do not violate the requirements of section 411(d)(6) [26 USCS § 411(d)(6)] or the definitely determinable requirement of section 401(a) [26 USCS § 401(a)], including section 401(a)(25) [26 USCS § 401(a)(25)]. . .

* * *

Q-5: When will the exercise of discretion by some person or persons, other than the employer, be treated as employer discretion?

A-5: **For purposes of applying the rules of this section and § 1.401(a)-4, the term "employer" includes plan administrator, fiduciary, trustee, actuary, independent third party, and other persons. Thus, if a plan permits any person, other than the participant (and other than the participant's spouse), the discretion to deny or limit the availability of a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit for which the employee is otherwise eligible under the plan (but for the exercise of such discretion), such plan violates the requirements of sections 401(a) [26 USCS § 401(a)], including section 411(d)(6) [26 USCS § 411(d)(6)] and, where applicable, the definitely determinable requirement of section 401(a) [26 USCS § 401(a)], including section 401(a)(25) [26 USCS § 401(a)(25)].**

Q-6: May a plan condition the availability of a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit on the satisfaction of objective conditions that are specifically set forth in the plan?

A-6: (a) Certain objective conditions permissible -- (1) In general. **The availability of a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit may be limited to employees who satisfy certain objective conditions provided the conditions are ascertainable, clearly set forth in the plan and not subject to the employer's discretion** except to the extent reasonably necessary to determine whether the objective conditions have been met. Also, the availability of the section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit must meet the

nondiscrimination requirements of section 401(a)(4) [26 USCS § 401(a)(4)]. See § 1.401(a)-4. . . .

* * *

(b) Conditions based on factors within employer's discretion generally impermissible. **A plan may not limit the availability of section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits permitted under the plan on objective conditions that are within the employer's discretion.** For example, the availability of section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits in a plan may not be conditioned on a determination with respect to the level of the plan's funded status, because the amount of plan funding is within the employer's discretion. . . .

* * *

Q-7: May a plan be amended to add employer discretion or conditions restricting the availability of a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit?

A-7: No. **The addition of employer discretion or objective conditions with respect to a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit that has already accrued violates section 411(d)(6) [26 USCS § 411(d)(6)]. Also, the addition of conditions (whether or not objective) or any change to existing conditions with respect to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits that results in any further restriction violates section 411(d)(6) [26 USCS § 411(d)(6)].** However, the addition of objective conditions to a section 411(d)(6) [26 USCS § 411(d)(6)] protected benefit may be made with respect to benefits accrued after the later of the adoption or effective date of the amendment. . . .

* * * (emphasis added)

STEWART'S EXHIBITS

PX1–Ameritech Management Pension Plan (AMPP) (§§5.1, 7.3 and 7.15, only)

5.1 Accrued Benefit. A Participant's "Accrued Benefit" as of any date shall be determined in accordance with the following:

(a) Prior to his Termination Date, his Accrued Benefit shall be his Defined Lump Sum. A Participant's Defined Lump Sum on a specified date will not be less than his Defined Lump Sum on nay earlier date. A Participant's "Defined Lump Sum" is equal to his Final Average Compensation multiplied by his Aggregate Lump Sum Percentage. A Participant's "Aggregate Lump Sum Percentage" is the sum of the product of his monthly Benefit Service Fraction for each month within the periods specified below multiplied by one twelfth of the "Applicable Percentage" (shown below) for each such month, with the month in which the Participant's birthday occurs being the first month under the next higher Applicable Percentage rate:

Ages at Which Benefit Service Is Earned	Applicable Percentage
Under age 30	6%
Ages 30 to 34	7%
Ages 35 to 39	8%
Ages 40 to 44	10%
Ages 45 to 49	12%
Ages 50 to 54	15%
Ages 55 and older	20%

For purposes of the foregoing, the Participant's "Benefit Service Fraction" for a calendar month commencing on or after the Effective Date will be a fraction the denominator of which is 170 and the numerator of which is the Hours of Service credited to him for such calendar month in accordance with subsection 2.3; this fraction may exceed 1. For any month prior to the Effective Date, a Participant's Benefit Service Fraction shall be determined based upon his Prior Credited Service as of the Effective Date. For this purse, "Prior Credited Service" means the entire period of service beginning on the day the individual was first employed by an Employer and ending on April 30, 1995, provided that an individual's Prior Credited Service shall be adjusted to delete (i) period of unpaid absence (whether on account of a leave or termination of employment), (ii) periods of employment in a capacity other than as an Eligible Employee and (ii) a proportionate amount of time attributable to part-time service (based upon the difference between the individual's scheduled work week and the full work week for his location); and provided further that Prior Credited Service shall only be calculated from the individual's most recent date of hire by an Employer prior to the Effective Date, unless (i) his reemployment date occurred prior to the Effective Date and (ii) he continues to work continuously for an Employer or Related Company for a minimum of five years from his reemployment date.

(b) At and after his Termination Date, a Participant's Accrued Benefit shall be a monthly amount payable to him for his life commencing on his Normal Retirement Date, in an amount determined by dividing his Defined Lump Sum on his Termination Date by a Deferred Factor (if he has not yet attained Normal Retirement Age) or by an Immediate Factor (if he has already attained Normal Retirement Age). The "Deferred Factor" shall be a factor equal to the actuarially equivalent present value of an annuity which begins at age 65 based on the deferred interest rates used by the Pension Benefit Guaranty Corporation ("PBGC") in order to value lump sum benefits under a single-employer defined benefit plan, as effective for the first day of the calendar year in which the Participant's Termination Date occurs, and the "Plan Mortality Table" determined by averaging the UP 1984 Mortality Table set forward one (1) year and the UP 1984 Mortality Table set back four (4) years. The "Immediate Factor" shall be a factor equal to the actuarially equivalent present value of an annuity which begins immediately based on the immediate interest rate used by the PBGC in order to value lump sum benefits under a single-employer defined benefit plan, as effective for the first day of the calendar year in which the Participant's Termination Date occurs, and the Plan Mortality Table.

7.3 Optional Forms of Payments. In place of his normal form of Retirement Benefit a Participant may elect to receive his Retirement Benefit under an optional form of payment set forth below. The optional forms will include the following:

(a) Single Life Annuity under subsection 7.1(a) (optional for Participants with Qualified Spouses).

(b) Lump Sum payment which is the present value of the Participant's Accrued Benefit under paragraph 5.1(b), determined using (i) the applicable PBGC rate for the January 1 of the calendar year in which the Participant's Annuity Starting Date occurs and (ii) the Plan Mortality Table. Except as expressly provided in subsection 7.4 a Lump Sum payment will only be made to the Participant as of his Termination Date.

7.15 Actuarial Equivalence. Except as specifically provided elsewhere in this document, the term "Actuarial Equivalent" means the benefit having the same value as the benefit it replaces based upon the mortality and interest rate assumptions (when mortality and interest rate assumptions are not otherwise provided for in this Plan) described below:

(a) the Plan Mortality Table, and

(b) the aggregate interest rate or rates which would be used by the PBGC as of the first day of the Plan Year in which the calculation is being made in order to value lump sum benefits under a single-employer defined benefit plan.

PX2–Stewart's Final AMPP Benefit Statement

Ameritech Pension Calculation Date: 06/04/199[?]
Management Calculation Date: 06/01/1996
-Final- Calculation Time: 6:31:16 PM
Pension Calculated as of: 07/01/1996

Soc. Sec. No:	300-54-1778
Name:	KATHLEEN STEWART
Business Unit:	Administration
Legal Entity:	Ameritech Services, Inc.

Defined Lump Sum Amount and Benefits

Basic Benefit Calculation

Final average pay:	$62,578.11
Lump Sum Credit Percentage:	1.7650
Defined lump sum amount:	$110,450.36

Calculation of Benefit Payment Options

Annuity beginning at age 65:

– PBGC table	4.50
– PBGC rate	3.8341
– monthly annuity	$2,400.61

Immediate annuity:

– PBGC table	4.50
– PBGC rate	16.8616
– monthly annuity	$545.87

Lump sum amount:

– lump sum amount	$110,450.36

Plan Prior to 5/1/95 Under Transition Rules

Basic Benefit Calculation

Calculated as of: 05/01/1995

Type of pension: Vested

Final average pay: $58,896.06

Breakpoint amount: $55,680.00

Eligibility service: 23 6 13

Service multiplier: 23 7

Transition monthly annuity: $1,567.29

(monthly annuity starting at 65)

Calculation of Benefit Payment Options

Annuity beginning at age 65:

– monthly annuity $1,567.29

Immediate annuity:

– Retirement Factor 0.1400

– monthly annuity $219.42

Lump sum amount:

~~– PBGC table~~ 4.50

– PBGC rate 3.8341

– lump sum amount $72,109.76

This statement is based on data in company files as of the date above. Every effort has been made to ensure the accuracy of the information reported. Please contact the Benefit Office at 1-800-232-0275 within 30 days if you have any questions or feel that anything is incorrectly represented.

Your eligibility for a pension and the amount of that pension are governed by the terms of the Ameritech Management Pension Plan.

PX3–SBC Pension Benefit Plan–NonBargained Program As Restated Through January 31, 2002 (§§3.1.1(a), 3.2.1, 4.2.2(b)(2), 4.2.6, 6.14.5, 6.18, 6.20, 9.14, only)

3.1.1(a) The Company shall be the Plan Sponsor, the Plan Administrator, and a named Fiduciary of the SBCPBP. The Committee, each organizational committee and subcommittee (as more fully discussed in Paragraph 3.4.4), and each Participating Company are also named Fiduciaries with respect to the particular duties and responsibilities herein provided to be allocated to each of them, respectively, including the duties and responsibilities that may be specifically allocated to the Company under the instrument of trust creating any group, commingled, common or master trust fund described in Paragraph 3.1.5. The Company may designate any person, including any insurer or any other contracting or delegated entity as an additional Fiduciary of the SBCPBP pursuant to the provisions of ERISA.

3.2.1 The Plan Administrator shall supervise administration of the SBCPBP. It shall be a principal duty of the Plan Administrator to see that the SBCPBP is carried out, in accordance with its terms, for the exclusive benefit of individuals entitled to participate in the SBCPBP without discrimination among them. The Plan Administrator shall have full power to administer the SBCPBP in all of its details, exclusive of granting and denying claims, subject to the applicable requirements of law.

4.2.2(b) Special Rules for Determining Average Annual Compensation

* * *

4.2.2(b)(2) If the Participant received no Pension Calculation Service during a portion of the Averaging Period, he shall be deemed to have received Pension Compensation for the period of no Pension Calculation Service (A) at the same Basic Rate or Rates of Pay, as applicable, that applied immediately prior to such Averaging Period, and (B) in the same amount of Group Incentive Compensation, Nondiscretionary Incentive Compensation, Differentials, Bellcore Buy Out and Rotational Compensation as he earned for the last period of equal length during which he earned Pension Calculation Service immediately prior to such Averaging Period.

(Emphasis added)

4.2.6 Pension Benefits Under Other Plans

A Participant's monthly pension benefit determined under this Subsection 4.2 shall be reduced by his monthly pension benefit under a Prior Bargained Plan to the extent that his benefit under the Prior Bargained Plan is based upon any period of service for pension calculation purposes that is recognized as Pension Calculation Service under the Plan.

6.14.5 Notwithstanding the provisions of the preceding portion of this Subsection 6.14, upon the reemployment by a Participating Company of an individual who had received a cash out of the present value of his monthly pension benefit under the provisions of this Subsection 6.14, such individual's Pension Calculation Service, as of the date of his Termination of Employment, shall be restored if he repays to the Plan before the earlier of five years from the date of the payment of the cash out or the end of the second year following the date of his reemployment, the full amount of such cash out with interest at the rate as directed by Treasury Regulation 1.411(a)-7(d)(2)(ii)(B) and determined in accordance with Subparagraph 411(c)(2)(C) of the Code, from the date of distribution of the cash out to the date of repayment.

Notwithstanding the preceding paragraph, effective April 1, 1997, repayment of cashed out amounts shall not be permitted upon rehire.

6.18 Controlling Law

The Plan shall be governed by and interpreted in accordance with ERISA.

Further, the Plan shall be construed, administered, and enforced according to the applicable laws of the State of Texas, but nothing herein shall be construed as waiving any preemption of the application of state insurance or other state laws to the Plan to the extent such preemption is provided under ERISA.

6.20 Benefits Mandated by Law

Notwithstanding any other provision of the Plan, eligibility to participate in the Plan and all benefits available under the Plan shall be provided in compliance with all legal requirements to which the Plan is subject.

9.1.4 The SBCPBP shall comply with all applicable requirements of federal and state law and shall be amended, if necessary, in order to satisfy any such requirements.

PX5–SBC Pension Benefit Plan–NonBargained Program Definitions and Rules for Crediting Service (§2.68.8, only)

2.68.8 Effective October 8, 1999, all former and current employee service with any entity that would be recognized under the Ameritech Management Pension Plan, the Ameritech Pension Plan, or a predecessor plan shall be treated as if such service had always been service within the SBC Controlled Group of Corporations, subject to otherwise applicable provisions of the Nonbargained Program governing the recognition of such service.

PX6–Supplement 12 to the SBC Plan (dated January 31, 2002)

Attachment B

Supplement 12: CAM Benefit

Notwithstanding anything in the Nonbargained Program to the contrary, the accrued monthly benefit of any CAM Participant, as defined below, shall not be less than the CAM Benefit, as defined below.

S12.1. Definitions

Any word or phrase not defined below shall have the meaning assigned to it by the Nonbargained Program.

"CAM Averaging Period" shall mean the period beginning January 1, 1995 and ending December 31, 1999.

"CAM Benefit" shall mean the Updated Career Average Minimum benefit calculated in accordance with Section 2 below.

"CAM Excess Limit" shall mean $400 per month.

"CAM Income" shall mean [(a) times (b)] plus (c) but not less than (d) where:

(a) Pension Compensation attributable to time periods during the CAM Averaging Period divided by five subject to the following provisions:

(i) Pension Compensation that is received in the first paycheck following the end of the CAM Averaging Period that is attributable to service during the CAM Averaging Period shall be included.

(ii) The Special Rules for Determining Average Annual Compensation contained in Section 4.2.2(b) of the Nonbargained Program shall be applied.

(b) Pension Calculation Service as of the end of the CAM Averaging Period.

(c) Pension Compensation paid after the end of the CAM Averaging Period, but excluding any Pension Compensation included under (a)(i) above.

(d) Pension Compensation paid on or after January 1, 1995.

"CAM Participant" shall mean any Participant who

(i) has a Termination of Employment on or *after* June 13, 2001,

(ii) is entitled to a nonforfeitable benefit under the Program at such Termination of Employment,

(iii) is not an EPR Terminee,

(iv) is not employed by an Excluded Company at such Termination of Employment, and

(v) if promoted on or after June 13, 2001, from the Bargained Program, from the Pacific Telesis Group Pension Plan, or the Ameritech Pension Plan, remains continuously employed as a Nonbargained Employee for at least three years before Termination of Employment.

"CB Actuarial Equivalent" shall mean, as of any particular date, the actuarial equivalent using the mortality table and interest rate that would be used by the Program to convert a cash balance benefit to an annuity.

"Excluded Company" shall mean any of AMC Resources, LLC; AWACS, Inc.; AWACS Resources, LLC; Ameritech Mobile Communications, Inc.; Ameritech New Media, Inc.; Houma Thibodaux Cellular Partnership; Pacific Bell Wireless, LLC; SBC Wireless Management Services LLC; SBC Wireless

Services, LLC; SBMS Resources, LLC; southwestern Bell Mobile Systems, Inc.; SouthwesternBell Wireless Resources, LLC, SouthwesternBell Wireless Inc.; SNET Cellular Resources, LLC; SNET Cellular, Inc; SNET Mobility Resources; LLC, SNET Mobility; Inc., Springwich Cellular Limited Partnership; or Washington/Baltimore Cellular Limited Partnership

"Modified Rule of 75" shall mean, with respect to a Participant, the attainment of any one of the following combinations of age and service:

(i) age 65 and 10 years of Pension Eligibility Service;
(ii) age 55 and 20 years of Pension Eligibility Service;
(iii) age 50 and 25 years of Pension Eligibility Service; or
(iv) any age and 30 years of Pension Eligibility Service.

"Updated Career Average Minimum Benefit" shall mean the CAM Benefit.

S12.2. Updated Career Average Minimum Benefit

The Updated Career Average Minimum Benefit as of a CAM Participant's Normal Retirement Age shall be 1.6% times CAM Income divided by twelve (12), payable as a single life annuity.

A Participant's Updated Career Average Minimum Benefit shall be reduced for benefits payable from a Prior Bargained Plan as specified by the Nonbargained Program Section 4.2.6.

If a CAM Participant has satisfied the Modified Rule of 75 at his Termination of Employment and commences payment before his Normal Retirement Age, the Early Retirement Discounts of Section 4.1.1(b) of the Nonbargained Program shall be applied. If a CAM Participant has not satisfied the Modified Rule of 75 at his Termination of Employment and elects to commence payment before his Normal Retirement Age, the Early Commencement factors of Section 4.1.2(b) of the Nonbargained Program shall be applied.

S12.3. Optional Forms of Payment

If the CAM Benefit is the most valuable benefit for a CAM Participant (when measured as a CB Actuarial Equivalent as of such CAM Participant's Annuity Starting Date), then such CAM Participant may elect to receive payment under Subsection S12.3.1, S12.3.2, S12.3.3, or S12.3.4 immediately below.

S12.3.1 Single Life Annuity

The ***CAM*** Participant may elect to receive his entire benefit as a Single Life Annuity and shall be subject to any applicable spousal consent procedures of Section 4.3 of the Nonbargained Program.

S12.3.2 Joint and 50% Survivor Annuity

The CAM Participant may elect to receive his entire benefit as a Joint and 50% Survivor Annuity. The amount of the Joint and 50% Survivor Annuity shall be 90% of the Single Life Annuity determined

under Subsection 3.1 immediately above and shall be subject to the provisions of Section 4.3 of the Nonbargained Program.

S12.3.3 Net Single Life Annuity

If a CAM Participant is entitled to receive any portion of his accrued benefit in a payment form other than Single Life Annuity or Joint and 50% Survivor Annuity, such ***CAM*** Participant may elect such other payment form for that portion of his accrued benefit, and the excess (measured as a CB Actuarial Equivalent as of such CAM Participant's Annuity Starting Date) shall be paid as a net Single Life Annuity, provided, however, that if such net Single Life Annuity is less than the CAM Excess Limit the entire benefit shall be payable in the other optional form selected.

S12.3.4 Net Joint and 50% Survivor Annuity

If a net Single Life Annuity is payable pursuant to Subsection 3.3 immediately above, the CAM Participant may elect to convert such net Single Life Annuity to a net Joint and 50% Survivor Annuity. The amount of such net Joint and 50% Survivor Annuity shall be 90% of the net Single Life Annuity determined under Subsection 3.3 immediately above and shall be subject to the provisions of Section 4.30 of the Nonbargained Program.

PX7–4/27/04 Amendment to SBC Plan (includes cover page)

April 27 ,2004

MS. JENNINGS:

This is to request your approval of amendments to the:

- SBC Pension Benefit Plan - Nonbargained Program (see Attachment A) and
- Ameritech Management Pension Plan (see Attachment B) ("the Plans").

By your signature below, the Plans are hereby amended to:

- clarify the current offset formulas applicable to all Participants who received a prior distribution from the Plans (e.g., CAM and enhanced benefit formulas),
- introduce a new "special offset formula" applicable to designated Participants, such as those who had received a prior distribution from the Plans as a result of a company-initiated force reduction, and
- designate a group of employees (i.e., Ameritech managers outsourced to IBM and then in-sourced back to SBC) as eligible for the new "special offset formula."

The SBC Legal Department has reviewed this letter and the attached amendments.

Please sign below to indicate your approval of the attached amendments.

Attachment

Authorized:

Dated: 4-27-04

Executive Vice President - Human Resources
Ameritech Corporation

Dated: 4-28-04

Senior Executive Vice President - Human Resources and Communications
SBC Communications, Inc.

Amendment to the SBC Pension Benefit Plan - Nonbargained Program ("Nonbargained Program")

1. Effective September 28, 2001, Section 4.2.6 Pension Benefits Under Other Plans of the Nonbargained Program is hereby amended by adding the following at the end thereof:

   In no event shall there be any double-crediting of pay or service in calculating the benefit for or on behalf of any Participant hereunder.

   General Benefit Offset Provisions

   In particular, if both
   (i) a Participant has earned service under another plan for which he has received or will be entitled to receive benefits, or has received a lump sum payout from this Plan for a prior period of service (hereinafter, the "Offsetting Benefit") and
   (ii) such Participant's benefit in this Plan is calculated including service that was used to calculate the Offsetting Benefit (hereinafter the "Total Service Related Benefit"),

then such Participant shall be entitled to a net benefit from this Plan calculated as the excess, if any, of (A) over (B), where:

(A) the Total Service Related Benefit payable as a Single Life Annuity as of the Normal Retirement Age;
(B) the Offsetting Benefit calculated as a Single Life Annuity as of Normal Retirement Age,

then applying any applicable reductions for early commencement to the net benefit. In the event that the Total Service Related Benefit is payable as a partial lump sum and partial annuity, the offset shall be applied first to reduce any lump sum payable. The Offsetting Benefit shall be calculated as including the value of any special enhancements including, by way of illustration and not by way of limitation, any temporary annuities or early retirement incentives whether or not calculated based on service.

2. Effective January 1, 2003, Section 4.2.6 Pension Benefits Under Other Plans of the Nonbargained Program is hereby amended by adding the following at the end thereof:

Special Offset Provisions

Notwithstanding anything in the Plan to the contrary, a Special Offset Participant shall be entitled to the larger of his pension benefit calculated under the

otherwise applicable provisions of this Plan, or a net benefit after offset calculated as the excess, if any, of (A) over (B) where:

(A) the Total Service Related Benefit as a Single Life Annuity as of the Termination of Employment (applying any applicable reductions for early commencement to such benefit);

(B) a Single Life Annuity as of the Termination of Employment calculated by accumulating the prior lump sum payout with interest from previous payout date to the Termination of Employment using the Special Offset Interest Adjustment Rate for the applicable time period, then converting such accumulated lump sum to a Single Life Annuity using the GATT Basis as of the Termination of Employment.

The offset described above shall be applied first to reduce any lump sum payable. There shall be no double-crediting of benefit accruals for any period of service.

3. Effective January 1, 2003, the Plan is amended by the addition of a new Supplement 17, such new supplement to read in its entirety as follows::

Supplement 17: Rehired IBM Transferees

17.1. Scope

This Supplement 17 will be applicable to Rehired IBM Transferees, who are hereby deemed Special Offset Participants for purposes of eligibility for the Special Offset Provisions of the! Plan.

17.2. Definitions Applicable to Supplement 17

Terms used in this Supplement 17 shall have the same meaning as provided for elsewhere in the Plan except as follows:

"Rehired IBM Transferees" shall mean Participants who were: (i) involuntarily terminated with a termination code of ISSC/IBM/Alliance,(ii) elected to receive a lump sum distribution from the Plan as a result of such termination, (iii) became employed by International Business Machines Corporation ("IBM"), (iv) subsequently re-hired by a Participating Company on or after January 1, 2001, and (v) whose prior IBM service was recognized by the Nonbargained Program for vesting and eligibility, pursuant to Section 2.67.2 of the SBC Pension Benefit Plan - Nonbargained Program Definitions and Rules for Crediting Service.

"Special Offset Interest Adjustment Rate!" applicable to the Rehired IBM Transferees shall mean an interest rate according to the following schedule:

Month/Year of Prior Lump Sum Distribution	Interest Rate
January 1996	95.7061%
July 1996	94.7833%
August 1996	91.0774%
November 1996	72.3740%
December 1996	73.8816%
January 1997	69.4927%

for the period through December 31, 2003, plus interest at an assumed rate of 8.5% per year thereafter through Termination of Employment.

PX10–June 2004 Summary of Material Modifications to SBC Plan (p. 3, only)

The change that is described in this SMM is applicable to certain nonbargained (management) employees designated by the Company who:

- Previously worked for Ameritech and were outsourced to IBM in 1996 and 1997 in support of the ComCo agreement, and
- Were subsequently insourced back to the Company in 2001.

To be eligible for the Special Offset described below, such nonbargained (management) employees must have:

- Been involuntarily terminated from Ameritech with a termination code of *ISSC/IBM/Alliance,*

and

- Subsequently received a lump sum distribution(s) from the Ameritech Management Pension Plan (AMPP) as a direct result of such termination.

For such eligible nonbargained (management) employees, the Plan was amended, effective Jan. 1, 2004, to adopt a Special Offset methodology that determines a non bargained (management) employee's net Updated Career Average Minimum (CAM) benefit. This Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP and approximates the asset recapture by the pension

trust had lump sum repayments been allowed. The Plan will pay the greater benefit provided under the current age 65 offset or the Special Offset methodology, as illustrated in the example below. The example assumes the employee is subject to age reductions. *Note: If you were a member of the Malloy Class and received a distribution, your offset will include the Malloy lump sum distribution.*

Current Age 65 Offset	
CAM Benefit age 65 monthly annuity	$2,030
Less Age 65 monthly annuity of prior lump sum payment	$2,000
Net monthly annuity	$30
Early retirement factor	0.700
Net CAM monthly annuity benefit payable at retirement	$21
Lump sum payable at retirement	$3,904

Special Offset	
CAM Benefit age 65 monthly annuity	$2,030
Early retirement factor	0.700
CAM benefit at retirement date	$1,421
Less monthly annuity equivalent at date of retirement of prior lump sum distribution, plus actual pension trust earnings through Dec. 31, 2003, plus 8.5% assumed earnings to date of retirement	$922

Net CAM monthly annuity benefit payable at retirement	$499
Lump sum payable at retirement	$92,771

NIN: 36731

PX12–February 2005 Summary of Material Modifications to SBC Plan (Questions and Answers section, only)

Questions and Answers

Q1: What is a pension merger?

A1: A pension merger is when plan assets under separate pension trusts are consolidated into a single pension trust. Before the merger, the plan assets of each of the pension plans listed in Q&A2 below were held in separate trusts. The pension merger consolidated these assets into one main pension trust on Dec. 31, 2004.

Q2: What pension plans were involved in the pension merger?

A2: The pension plans that were involved in the merger include:

- Ameritech Management Pension Plan
- Ameritech Pension Plan

- Pacific Telesis Group Pension Plan
- SNET Pension Plan
- SBC Pension Benefit Plan

Q3: What is the name of the new plan?

A3: All of the assets in the above named trusts have been merged into the SBC Pension Benefit Plan. The following is a complete listing of each program under the SBC Pension Benefit Plan.

- SBC Pension Benefit Plan - Nonbargained Program
- SBC Pension Benefit Plan - Southwest Program (formerly called the SBC Pension Benefit Plan - Bargained Program)
- SBC Pension Benefit Plan - Bargained Cash Balance Program
- SBC Pension Benefit Plan - West Program (formerly called the Pacific Telesis Group Pension Plan)
- SBC Pension Benefit Plan - East Program (formerly called the SNET Pension Plan)
- SBC Pension Benefit Plan - Midwest Program (formerly called the Ameritech Pension Plan)
- SBC Pension Benefit Plan - Midwest Management Program (formerly called the Ameritech Management Pension Plan)

Q4: How will this pension merger affect my pension benefits?

A4: The pension merger did not affect any of the calculations or provisions in each program. The plan provisions remain as they were before the pension merger and your benefits will continue to

accrue under those provisions. The pension merger only consolidates the funds of the separate trusts into one main trust. There will not be any changes to your pension benefits as a result of this pension merger.

Q5: Why did SBC merge the pension trusts?

A5: SBC merged the pension trusts in order to streamline reporting requirements and to allow surplus funds to be effectively used between all plans.

Q6: When did the pension merger happen?

A6: Dec. 31, 2004

Q7: Did the pension merger result in an automatic vesting event?

A7: No.

Q8: Are there any pension plans that were not included in the pension merger?

Q8: Yes. The Employees' Pension Plan of Ameritech Publishing Ventures, Inc. (APVI Plan) was not merged into the SBC Pension Benefit Plan.

PX13–6/15/02 CAM Estimate

Received 6/15/2002

SBC PENSION PLAN
SERVICE CENTER

Retirement Calculation Summary

KATHLEEN STEWART
1323 HARMONY DR
WADSWORTH, OH 44281

The following retirement statement provides important information about your Pension Benefit under SBC Pension Benefit Plan Pension Plan ("Plan"). This statement replaces any previous benefit estimates provided to you. If you are currently married, your spouse should also review the information presented on this statement.

Section A - Calculation Data (Please Review)

• Birth Date	*April 12, 1953*
• Net Credited Service Date	*October 18, 1971*
• Termination Date	*October 18, 2003 Age 50*
• Benefit Commencement Date	*October 19, 2003*
• Interest Rate	5.40%

Your Benefit Commencement Date represents the date that your Pension Benefit is scheduled to commence under the plan provided you do not elect to defer commencement of your benefit as explained in **Section C**. To make changes to your Benefit Commencement Date, or to correct any of the information provided above, please contact the SBC

Pension Plan Service Center at 1-800-557-3640.

Section B - Calculation Results (Please Review)

Based on the information summarized in **Section A**, your Pension Benefit under the Plan has been determined as follows:

Your Pension Benefit is	$12,289.62

The amount of your Pension Benefit determined above assumes payment to you in the form of an Immediate Lump Sum.

1778

PENSION CALCULATION (CAM)

A. COMPENSATION AND EARNINGS FOR BASE PERIOD 1/1/1995 - 12/31/1999

A1.	Total Pension Compensation for Base Period 1/1/95-12/31/99	$307,676.67
A2.	Base Period (Years)	5
A3.	Average Annual Income for Base Period (A1/A2)	$61,535.33
A4.	Pension Credited Service to End of Base Period (Years)	24.75
A5.	Adjusted Career Income through 12/31/1999 (A3xA4)	$1,522,999.52

B. COMPENSATION AND EARNINGS FROM 1/1/2000

B1.	Total Pension Compensation after Base Period	$242,216.20

C. TOTAL MONTHLY PENSION BENEFIT

C1.	Total Adjusted Career Income through 12/31/1999 (A5+B1)	$1,765,215.72
C2.	Pension Benefit Factor	0.016
C3.	Annual Benefit (C1xC2)	$28,243.45

C4.	Monthly Benefit as a Single Life Annuity (C3/12 Months)	$2,353.62

D. REDUCTION FOR EARLY RETIREMENT

D1.	Service Pension Eligible	Y
D2.	Reduction Factor for Year(s) and Month(s) prior to Age 55	0.865
D3.	Amount of Reduction for Early Retirement (C6xD2)	$317.74
D4.	Monthly Benefit Reduced for Early Retirement (C4-D3)	$2,035.88
D5.	Offset-Prior Age 65 SLA	$2,400.61
D6.	Difference	<-$364.73>

E. FACTORS USED IN DETERMINING LUMP SUM

E1.	Lump Sum Conversion Factor	176.2632
E2.	CAM Lump Sum (D4xE1)	$0

F. COMPARISON OF BENEFITS

F1.	Greatest Non-CAM Benefit	$12,289.62	$69.72
F2.	CAM Benefit	$0.00	0

G. SUMMARY OF CALCULATION

G1.	CAM Lump Sum Benefit	$0.00
G2.	CAM SLA	$0.00
G3.	CAM J&S 50% Annuity	$0.00

XXX-XX-1778

Received 6/15/2002

SBC PENSION PLAN
SERVICE CENTER
Career Average Minimum
Retirement Calculation Summary

KATHLEEN STEWART
1323 HARMONY DR
WADSWORTH, OH 44281

The following retirement statement provides important information about your Pension Benefit under SBC Pension Benefit Plan Pension Plan ("Plan"). This statement replaces any previous benefit estimates provided to you. If you are currently married, your spouse should also review the information presented on this statement.

Section A - Calculation Data (Please Review)

• Birth Date	*April 12, 1953*
• Net Credited Service Date	*October 18, 1971*
• Termination Date	*April 12, 2008* ***Age 55***
• Benefit Commencement Date	*April 13, 2008*
• Interest Rate	5.40%

Your Benefit Commencement Date represents the date that your Pension Benefit is scheduled to commence under the plan provided you do not elect to defer commencement of your benefit as explained in **Section C**. To make changes to your Benefit Commencement Date, or to correct any of the information provided above, please contact the SBC Pension Plan Service Center at 1-800-557-3640.

Section B - Calculation Results (Please Review)

Based on the information summarized in **Section A**, your Pension Benefit under the Plan has been determined as follows:

Your Pension Benefit is	$76,499.44

The amount of your Pension Benefit determined above assumes payment to you in the form of an Immediate Lump Sum.

1778

PENSION CALCULATION (CAM)

A. COMPENSATION AND EARNINGS FOR BASE PERIOD 1/1/1995 - 12/31/1999

A1.	Total Pension Compensation for Base Period 1/1/95-12/31/99	$307,676.67
A2.	Base Period (Years)	5
A3.	Average Annual Income for Base Period (A1/A2)	$61,535.33
A4.	Pension Credited Service to End of Base Period (Years)	24.75
A5.	Adjusted Career Income through 12/31/1999 (A3xA4)	$1,522,999.52

B. COMPENSATION AND EARNINGS FROM 1/1/2000

B1.	Total Pension Compensation after Base Period	$624,716.02

C. TOTAL MONTHLY PENSION BENEFIT

C1.	Total Adjusted Career Income through 12/31/1999 (A5+B1)	$2,147,715.54
C2.	Pension Benefit Factor	0.016
C3.	Annual Benefit (C1xC2)	$34,363.45

C4.	Monthly Benefit as a Single Life Annuity (C3/12 Months)	$2,863.62

D. REDUCTION FOR EARLY RETIREMENT

D1.	Service Pension Eligible	Y
D2.	Reduction Factor for Year(s) and Month(s) prior to Age 55	1
D3.	Amount of Reduction for Early Retirement (C6xD2)	$0.00
D4.	Monthly Benefit Reduced for Early Retirement (C4-D3)	$2,863.62
D5.	Offset-Prior Age 65 SLA	$2,400.61
D6.	Difference	$463.01

E. FACTORS USED IN DETERMINING LUMP SUM

E1.	Lump Sum Conversion Factor	165.222
E2.	CAM Lump Sum (D4xE1)	$76,499.44

F. COMPARISON OF BENEFITS

F1.	Greatest Non-CAM Benefit	$37,068.37	$224.35

F2.	CAM Benefit	$76,499.44	$463.01

G. SUMMARY OF CALCULATION

G1.	CAM Lump Sum Benefit	$76,499.44
G2.	CAM SLA	$463.01
G3.	CAM J&S 50% Annuity	$416.71

XXX-XX-1778

PX14–SBC's Explanation to Stewart of 6/15/02 CAM Estimates and Selected Pages of 10/17/03 SBC Power Point Presentation to Leapfroggers, Only

SBC Communications Inc.
SBC Pension and Savings Plan Service Center
P. O. Box 420
Little Falls, NJ 07424-0420

SBC Pension and Savings Plan
Service Center

KATHLEEN A. STEWART
1323 HARMONY DR
WADSWORTH, OH 44281 December 18, 2002

This letter is in response to your request for detailed information on the pension estimates your received.

4.2.2(b

1) In regards to the Total Pension Compensation for Base Period 1/1/95-12/31/99 Section 4.4.4(b)2 of the SBC Pension Benefit Plan - Nonbargained Program states the following:

"If the Participant received no Pension calculation Service during a portion of the Averaging Period, he shall be deemed to have received Pension Compensation for the period of no Pension Calculation Service (A) at the same Basic Rate or Rates of Pay, as applicable, that applied immediately prior to such Averaging Period, and (B) in the same amount of Group Incentive Compensation, Nondiscretionary Incentive Compensation, Differentials, Bellcore Buy

Out and Rotational Compensation as he earned for last period of equal length during which he earned Pension Calculation Service immediately prior to such Averaging Period."

In your case the "rate of pay immediately prior to the Averaging Period" is your 1/1/95 rate of pay. We substitute that rate for all periods of missing pay. For applicable bonuses the "last period of equal length" is 7/1/91-7/1/96. See Attachment A.

2) Total pension compensation after base period uses actual pay earned and assumes you continue at that same rate of pay until projected date of termination. It also assumes no bonuses are earned and the current GATT rate at the time of the projection is used. See Attachment B

3) The basis for the Lump Sum conversion factor is interest rate and mortality table. At the time your projections were completed the GATT rate was 5.40%, your age at projected Date of Termination was 55, and we were using the GAM'83 mortality table. See Attachment C.

4) Current Administrative practice is to offset the current benefit by any prior benefits received using the prior unreduced age 65 annuity.

Please retain this confirmation statement for your records.

Additional Information
Visit the SBC Pension and Savings Plan Web site at https://www2.benefitsweb.com/sbc.html or call the SBC

Pension and Savings Plan Service Center toll-free at **1-800-557-3640** (domestic) or **+1-201-363-2953** (international). Service associates are available to assist you Monday through Friday, from 7 a.m. to 7 p.m. Central time, except some holidays. The Web site and interactive voice response system (IVR) are available 24 hours a day, seven days a week. For TDD services for the hearing-impaired, call the SBC Pension and Savings Plan Service Center toll-free at **1-800-833-8334**.

The information in this document relates to benefits under an employee benefit plan sponsored by SBC Communications Inc. or one of its affiliates. For full details of the plan, you should consult the summary plan description, summaries of material modifications and, where applicable, the prospectus or prospectus supplement, or the official plan documents. In all cases, the official plan documents govern and are the final authority on the terms of the plan. The SBC companies reserve the right to terminate or amend any and all benefit plans, subject to bargaining agreements where applicable. Participation in the plan is neither a contract nor a guarantee of future employment. Please keep this for future reference.

P.O. Box 420, Little Falls, NJ 07424
800-557-3640

Benefits Response regarding
Pension Plan Methodology Concern
from

Mr. Stephen Warth
Ms. Kathy Stewart
Mr. Mike Badaczewski
Mr. Joel Cavalier
Mr. Bob Malloy
Mr. Dale Gorka
Mr. Stephen Jones

Employees who chose a lump-sum distribution from the Ameritech Management Pension Plan (AMPP) in 1996 when transitioned to IBM and subsequently Insourced to SBC after the termination of the IBM Contract in 2001

Not for Distribution except to intended recipients
without SBC Benefits approval

Background and Issue
Pension Treatment for Rehires

Background

- July 1996 - approx. 215 IT managers terminated their AIT service under a contractual arrangement with IBM
  - Approx. 80% (175) of the IT managers elected to receive a lump sum termination benefit from the AMPP
  - Total of **$18.7M** in lump sum payouts
- December 2000 - the AMPP was closed to new participating
- Jan. 2001 - the IT managers were rehired (deemed Leapfroggers) and became participants in the SBC management pension plan (SBCPBP-NB) with eligibility for a cash balance benefit

Not for Distribution except to intended recipients without SBC Benefits approval

PX22–Stewart's Administrative Claims

BRADLEY J. SCHRAM 1
HOWARD HERTZ
VICTOR M. NORRIS
ROBERT P. GELLER
STEVE J. WEISS 2
WALTER J. PISZCZATOWSKI
JEFFREY A. ROBBINS 2, 5
MARK L. KOWALSKY
KENNETH F. SILVER
MICHAEL J. REX
BRIAN WITUS 3
EVA T. CANTARELLA
LISA M. KAVALHUNA 4
SIMON J. HILL 3
STEVEN P. JENKINS
GERALD P. CAVALLIER 5
LAURIE S. RAAB
DEREK D. MCLEOD 27
DANIEL S. SINGER 2, 6
GARY P. SUPANICH

COUNSEL
JAMES W. BURDICK, P.C. 7

OF COUNSEL
ELMER L. ROLLER, P.C.
JUSTIN C. RAVITZ

HARVEY D. GELLER
(1928 - 1989)
---

1 ALSO MEMBER OF FLORIDA AND WASHINGTON DC BARS
2 ALSO MEMBER OF FLORIDA BAR
3 ALSO MEMBER OF ILLINOIS BAR
4 ALSO MEMBER OF OHIO BAR
5 ALSO CPA AND LLM IN TAXATION
6 ALSO LLM IN TAXATION
27 ALSO MEMBER OF CALIFORNIA BAR

LAW OFFICES
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1760 SOUTH TELEGRAPH ROAD
SUITE 300
BLOOMFIELD HILLS, MICHIGAN 48302-0183

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www.hertzschram.com

September 11, 2007

Via Overnight USPS
Fidelity Investments
Attn: AT&T Claims and Appeals Team
P. O. Box 770003
Cincinnati, OH 45277-0066

Re: **Claims** for additional benefits under the AT&T Pension Benefit Plan NonBargained Program ("Plan")

Participant: Kathleen A. Stewart ("Stewart"); SSN 300-54-1778

Dear AT&T Claims and Appeals Team ("Team"):

I represent Stewart with respect to her Claims for additional benefits under the Plan, formerly known as the SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program. AT&T, f/k/a SBC Communications Inc. ("SBC") (also referred to in the Plan as "the Company"), is the Plan Sponsor, Plan Administrator and a named Fiduciary for the Plan. Plan §3.1.1(a) (PX6)[1]; Definitions and Rules §2.16 (PX8). Stewart's Claims arise from the Company's adoption of a Plan amendment that reduced the pension benefit she had already accrued as of the date of the amendment, in violation of the Plan's anti-reduction provisions and ERISA's anti-cutback rule.

---

[1] Exhibits attached hereto and denoted as PX1, PX2 and so forth through PX54 have been Bate-stamped for easier reference to specific pages. An Exhibit list is also attached.

BACKGROUND

Stewart's Prior Participation in the Ameritech Management Pension Plan ("AMPP") and Distribution of Her AMPP Pension Benefit in August 1996

From 1971 until July 1996, Stewart worked for Ameritech Services, Incorporated or one of its predecessors ("Ameritech"). As a management employee of Ameritech, Stewart was a Participant in the Ameritech Management Pension Plan ("AMPP") (PX1). Effective July 1, 1996, Ameritech outsourced Stewart's department to IBM Global Services ("IBM Global"). Accordingly, as of July 1, 1996, Stewart, who had accumulated 24.75 years of service with Ameritech, was no longer an Ameritech employee, but an employee of IBM Global.

As a result of her separation from Ameritech, Stewart was entitled to a distribution of her AMPP accrued benefit, a monthly annuity commencing at age 65, which Ameritech calculated to equal $2,400.61/month. See AMPP Final Benefit Statement for Stewart (PX3). As permitted under the AMPP, Stewart elected to receive her age-65 AMPP annuity in an optional form--an immediate lump sum. On or about August 2, 1996, Stewart's Individual Retirement Account ("IRA") received a lump sum distribution from the AMPP in the amount of $110,450.36, calculated as of July 1, 1996. Id.

In October 1999, SBC acquired Ameritech (PX4). However, Stewart continued to work for IBM Global.

Stewart's Subsequent Participation in the Plan

In January 2001, SBC terminated its Ameritech outsourcing contract with IBM Global. On January 31, 2001, SBC hired Stewart. As a result of her employment with SBC, Stewart became a Participant in the Plan.

When SBC hired Stewart in January 2001, the Plan was a "cash balance plan," meaning it provided a bookkeeping account for each Participant (denoted the Account Balance), which was periodically credited with a percentage of the Participant's pay and interest. Plan §4.2.1(a)(2) (PX6); and Summary Plan Description ("SPD") (issued 3/99) at PB 1 (PX7). Although the Account Balance is a single sum, the "normal" form of payment of the cash balance benefit is a monthly annuity commencing at Normal Retirement Age (generally defined in the Plan as age 65). Plan §4.2.1(a)(1) (PX6); Definitions and Rules §2.62 (PX8).

The Plan's Adoption of an Alternate Benefit Formula: the Updated Career Average Minimum ("CAM")

In September 2001, SBC's Human Resources Committee recommended that the Plan be amended to add an alternate formula for computing benefits--the Updated Career Average Minimum ("CAM"). See Summary of Recommendation (PX9); and Proposed Resolution (PX10) Via a Supplement 12 to the Plan, SBC adopted the Committee's recommendation, but made the CAM formula effective for Participants who terminate employment on or after June 13, 2001. Supplement 12 (PX11). The CAM is a monthly annuity commencing at Normal Retirement Age (age 65), computed as 1.6% of the Participant's CAM Income (as defined in Supplement 12) divided by 12. Id. at S12.1.

The Initial Problem: Without *Any* Authority from the Plan, SBC "Offset" Stewart's CAM Benefit With Her Prior AMPP Benefit

Under the Plan, Participants may elect to receive their pension before age 65. Plan §4.1.1(b) and §4.1.2(b) (PX6). If a Participant makes such an election, the pension is reduced by a specified percentage based on the Participant's age and service when payment begins (hereinafter referred to as the "Early Reduction Factor" or "ERF") unless the Participant is Service Pension eligible (requires lengthy service) *and* elects to receive the pension on or after age 55, in which case the ERF will be 1.00 and the pension will effectively be unreduced. Compare Plan §4.1.1(b) (ERF for Participants who are Service

Pension eligible) with Plan §4.1.2(b) (ERF for Participants who are Deferred Vested Pension eligible; requires only 5 years of service) (PX6).

On June 15, 2002, Stewart received two CAM estimates from SBC–one that assumed she would commence receipt of her CAM annuity at age 50, and another that assumed she would commence receipt of her CAM annuity at age 55. 6/15/02 CAM Estimates (PX19). These estimates reveal that SBC (i) applied an ERF to Stewart's age-65 CAM annuity, and then (ii) offset the resultant CAM annuity payable *before* age 65 by the amount of Stewart's AMPP annuity payable *at* age 65 ($2,400.61/month). Id. Stewart has no quarrel with the first part of this calculation described in clause (i). Her Claims concern the second part of SBC's calculation–the offset–because neither the Plan nor Supplement 12 (the Plan provision delineating the CAM benefit) permitted the CAM to be offset by the AMPP annuity payable at age 65 or by any other annuity or benefit.

Without the offset, Stewart's CAM annuity would have equaled **$2,035.88**/month at age 50, and **$2,863.62**/month at age 55. 6/15/02 CAM Estimates (PX19). But, with the improper offset, each of these CAM annuities was reduced by $2,400.61, producing a [negative] **-$364.73**/month CAM annuity at age 50, and $463.01/month CAM annuity at age 55. Id.

Aside from the absence of any Plan provision allowing the offset, Stewart believed that offsetting the CAM annuity payable *before* age 65 by the AMPP annuity payable *at* age 65 was actuarially unreasonable because it assumed the AMPP annuity payable *at* age 65 had already attained that value at any age before age 65. Therefore, commencing on June 24, 2002 and continuing for two years thereafter, Stewart along with six of her co-workers ("the Endorsers") embarked on an e-mail and letter- writing campaign to SBC officers and benefits personnel wherein they repeatedly complained that (i) the Plan contained no offset methodology for calculating the CAM, and (ii) the offset methodology was actuarially unreasonable. See PX19 thru PX40.

As a result of these communications, on April 27, 2004, SBC amended the Plan to expressly provide two different offsets to the CAM. The first offset formula ("the General Offset") purports to "clarify the current offset formulas" and applied to all Participants who had received a prior distribution from the Plan or "other Plans of the Non Bargained Program." See 4/27/04 Amendment (PX12).[2] At the time, the AMPP

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[2]Under the General Offset, the age-65 CAM annuity is offset by the age-65 AMPP annuity. The applicable ERF is then applied, but only if the Participant elects to receive the CAM before age 65. See June 2004 Summary of Material Modifications ("SMM") (PX16) (but refers to the General Offset as the "Current Offset"). This is the same offset methodology set forth in a Power Point Presentation SBC officers and benefits personnel made to Stewart and four of the Endorsers on October 17, 2003. See 10/17/03 Power Point Presentation at p. 4 (PX32), and e-mails to Stewart and the Endorsers identifying the SBC officers and benefits personnel who participated in the Power Point Presentation (PX30 and PX31).

was not part of the Non Bargained Program because the AMPP did not merge into the Plan until 12/31/04. See Resolution approving merger of AMPP into the Plan effective 12/31/04 (PX5); and SMM, dated February 2005 (PX18).

The second offset formula ("the Special Offset") applied to former Ameritech managers like Stewart who were outsourced to IBM Global and then later hired by SBC ("the Leapfroggers"). 4/27/04 Amendment (PX12).[3] Leapfroggers are entitled to the greater of the CAM under the General Offset and CAM under the Special Offset. Id. The General Offset and Special Offset were made retroactively effective, as of September 28, 2001 and January 1, 2003, respectively. Id.[4]

Claim I - Violation of the Plan's Anti-Reduction Provisions and ERISA's Anti-Cutback Rule

Prior to the 4/27/04 Amendment, the Plan expressly limited any offset of the CAM benefit to benefits paid or payable under a "Prior Bargained Plan" (but even for that situation did not specify the methodology for calculating the offset). Plan §4.2.6 (PX6) and Supplement 12 at S12.2 (PX11) (emphasis added). Therefore, as to benefits paid or payable under

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[3] The Special Offset methodology is explained in Claim II.

[4] SBC notified Stewart of the 4/27/04 Amendment on June 24, 2004. See 6/24/04 e-mail from Susan Sroka to Stewart and attachments thereto (PX41). However, SBC never addressed Stewart's complaint that the Plan did not provide an offset for computing the CAM [not until after Stewart complained about the offset and SBC adopted the 4/27/04 Amendment].

a Prior Non-Bargained Plan (e.g., the AMPP), the 4/27/04 Amendment plainly did not "clarify" any existing offset provision. Rather, it added an offset to the formula for computing the CAM benefit. More importantly, for Participants like Stewart who received a benefit from a Prior Non-Bargained Plan (e.g., the AMPP), the 4/27/04 Amendment reduced the CAM benefit accrued before the Amendment because the Plan did not previously provide for an offset of the CAM benefit as to such Participants.

The reductions to the CAM benefit resulting from the offset are huge, as illustrated by CAM estimates Sroka e-mailed to Stewart on 6/24/04 (PX41). Those estimates reveal that, as of 4/01/04, three weeks before SBC adopted the 4/27/04 Amendment, Stewart had already accrued a CAM annuity with*out* offset in the amount of $2,440/month if paid at age 65, and $2147/month if paid on 4/01/04 when Stewart was age 50 years and 11 months. But after application of the offsets, the then accrued CAM annuity is reduced to $39/month if paid at age 65 [SBC applied the General Offset] and to $1170/month if paid at age 50 years and 11 months [SBC applied the Special Offset]. Id.

Subsequent estimates of Stewart's CAM benefit at various ages further confirm that application of the offset provisions in the 4/27/04 Amendment reduce the CAM benefit Stewart had already accrued before SBC adopted the 4/27/04 Amendment. For example, CAM estimates SBC issued on July 9, 2004 reveal that, after the offset, Stewart's CAM annuity would equal $1,122.89/month if paid at age 55 [SBC applied the Special Offset], $1,233.43/month if paid at age 60 [SBC

applied the General Offset], and $1,863.43/month if paid at age of 65 [SBC applied the General Offset]. See 7/09/04 CAM estimates for Stewart (PX42).

Similarly, CAM estimates SBC issued on June 14, 2005 show that after the offset Stewart's CAM annuity would equal $1,330.74/month if paid at age 55 [SBC applied the Special Offset], $1,114.34/month if paid at age 58 [SBC applied the Special Offset], and $1,672.31/month if paid at age 63 [SBC applied the General Offset]. See 6/14/05 CAM estimates for Stewart (PX47).

And CAM estimates SBC issued on 7/26/06 and 8/22/06 show that after the offset Stewart's CAM annuity would equal $1,125.20/month if paid at age 53.33 (PX50) and $1,133.94/month if paid at age 53.5 (PX51). Although these estimates do not show which offset SBC applied, Stewart believes it was the Special Offset because all other estimates for the CAM before age 55 apply the Special Offset.

More recent CAM estimates issued June 21, 2007 show that after the offset Stewart's CAM annuity would equal $1,292.72/month if paid at age 55 [AT&T applied the Special Offset], $1,303.12/month if paid at age 60 [AT&T applied the General Offset], and $1,988.46/month if paid at age 65 [AT&T applied the General Offset]. See 6/21/07 CAM estimates for Stewart (PX52).

All of the foregoing estimates establish that the CAM benefit *with* offset is less than the CAM benefit with*out* offset that Stewart had already accrued *before* the 4/27/04 Amendment

because, as of 4/01/04 (three weeks before SBC adopted the 4/27/04 Amendment that added the offset provisions), Stewart had already accrued a CAM annuity with*out* offset in the amount of $2,440/month if paid at age 65, and $2,147/month if paid on 4/01/04 when Stewart was age 50 years and 11 months. See again PX41. Moreover, as to each of these estimates, the CAM benefit *with* offset would be even less if the alternate offset were applied because, according to the 4/27/04 Amendment (PX12), Leapfroggers are entitled to the greater of the CAM under the General Offset and CAM under the Special Offset.

The Plan states that it "shall be governed by and interpreted in accordance with ERISA"; that "all benefits available under the Plan shall be provided in compliance with all legal requirements to which the Plan is subject"; and that the Plan "shall comply with all applicable requirements of federal and state law and shall be amended, if necessary, in order to satisfy any such requirements." Plan §6.18, §6.20 and §9.1.4 (emphasis added) (PX6).

In addition, §4.2.5 of the Plan (PX6) and §3.5 of the Definitions and Rules for the Plan (PX8) state that "in no event shall the monthly pension benefit of any Participant accrued as of any time be less than his monthly pension benefit accrued as of any earlier time." In fact, this requirement is codified in ERISA §204(g) and Internal Revenue Code ("Code") §411(d)(6), commonly known as the anti-cutback rules because they prohibit plan amendments that eliminate or reduce "accrued benefits" or early retirement benefits accrued before the amendment. 29 U.S.C. §1054(g); and 26 U.S.C. §411(d)(6). The Plan purports to be tax-

qualified under Code §401(a), which requires compliance with Code §411. See 26 U.S.C. §401(a)(7); §2.81 of the Plan's Definitions and Rules (PX8); and Special Tax Notice attached to 8/22/06 and 6/21/07 CAM estimates for Stewart (PX51 and PX52). Under ERISA and the Code, the "accrued benefit" is the annual benefit commencing at "normal retirement age," which ERISA and the Code generally define as age 65. 29 U.S.C. §1002(23), (24); and 26 U.S.C. §411(a)(7), (8).

Because application of either offset in the 4/27/04 Amendment reduces the age-65 CAM annuity and early retirement CAM annuity accrued before the Amendment, the 4/27/04 Amendment violates the Plan's anti-reduction provisions and ERISA's anti-cutback rule. See also Report of actuary David R. Fleiss (**PX53**) (reaching same conclusion; citing additional authority). Stated otherwise, the 4/27/04 Amendment is illegal and unenforceable.

Relief Requested

With respect to Claim I, Stewart requests that her CAM benefit be computed without any offset, General or Special. If the Team grants this request and the Plan or Plan fiduciaries do not object to such grant, the Team need not address Claim II or Claim III.

. . . . . .

Claim II - Violation of ERISA's Anti-Forfeiture Rules With Respect to the Special Offset

The Plan states that it "shall be governed by

and interpreted in accordance with ERISA"; that "all benefits available under the Plan shall be provided in compliance with all legal requirements to which the Plan is subject"; and that the Plan "shall comply with all applicable requirements of federal and state law and shall be amended, if necessary, in order to satisfy any such requirements." Plan §6.18, §6.20 and §9.1.4 (PX6).

Pursuant to ERISA §203(a) and Code §411(a), commonly known as the anti-forfeiture rules, vested accrued benefits are "nonforfeitable." 29 U.S.C. §1053(a); and 26 U.S.C. §411(a). The Plan purports to be tax-qualified under Code §401(a), which requires compliance with Code §411. See 26 U.S.C. §401(a)(7); §2.81 of the Plan's Definitions and Rules (PX8); and Special Tax Notice attached to 8/22/06 and 6/21/07 CAM estimates for Stewart (PX51 and PX52). Treasury Regulation 1.411(a)-4, which enforces ERISA §203(a), explains that adjustments to plan benefits in excess of reasonable actuarial reductions can result in accrued benefits being impermissibly forfeited. 26 C.F.R. §1.411(a)-4.

As noted, the 4/27/04 Amendment provides a General Offset against the CAM benefit and, for Participants like Stewart who were outsourced to IBM Global and then later in-sourced back to SBC (i.e., the Leapfroggers), an alternative Special Offset against the CAM benefit. 4/27/04 Amendment (PX12). Leapfroggers are entitled to the greater of the CAM under the General Offset and CAM under the Special Offset. Id.

The Special Offset is computed as follows: (i)

calculate the age-65 CAM annuity without any offset, (ii) if the Participant elects to receive the CAM benefit before age 65, apply the applicable ERF, and (iii) then offset the resultant CAM annuity by the projected annuity value of the lump sum received from the AMPP as of the date of commencement of the CAM benefit ("the Special Offset Annuity"). 4/27/04 Amendment (PX12). The Special Offset Annuity is determined by (i) accumulating interest on the lump sum received from the AMPP from the date it was paid to the date of commencement of the CAM benefit using a Special Offset Interest Adjustment Rate ("SOIA Rate"), and then (ii) converting this projected lump sum into an annuity using the Plan's actuarial assumptions (interest rate and mortality table) for converting a lump sum into an annuity. Id.

The SOIA Rate is (i) for the projection period through December 31, 2003, set forth in Tables and varies depending on when the Leapfrogger received his/her AMPP lump sum, and (ii) for the projection period after December 31, 2003, 8.5% per annum regardless of when the Leapfrogger received his/her AMPP lump sum. 4/27/04 Amendment (PX12). The Table for AMPP distributions in 1996 and 1997 is in the 4/27/04 Amendment (PX12). The Tables for subsequent AMPP distributions are included in Amendments dated 6/22/04 (PX13) and 8/16/04 (PX14).

The Table below collects all SOIA Rates for the projection period through December 31, 2003:

Month/Year of prior AMPP lump sum	SOIA Rate
January 1996	95.7061%
June 1996	87.5606%
July 1996	94.7833%
August 1996	91.0774%
September 1996	82.9980%
October 1996	80.6276%
November 1996	72.3740%
December 1996	73.8816%
January 1997	69.4927%
February 1997	69.9151%
March 1997	74.4663%
April 1997	69.6354%
June 1997	55.7122%
July 1997	46.9578%
November 2000	5.9304%
December 2000	2.7586%
January 2001	0.3052%
February 2001	6.2838%

March 2001	11.5957%

See again 4/27/04 Amendment (PX12); 6/22/04 Amendment (PX13); and 8/16/04 Amendment (PX14). As explained in the following paragraphs, the SOIA Rates are unreasonably high. Consequently, use of the SOIA Rates will result in an impermissible partial forfeiture of the CAM benefit.

As noted, on or about August 2, 1996, Stewart's IRA received $110,450.36 as payment of her lump sum under the AMPP. See AMPP Final Benefit Statement for Stewart (PX3). Therefore, Stewart's SOIA Rate is 91.0774% from the date she received her AMPP lump through December 31, 2003, and 8.5% per annum thereafter until the date she commences receipt of her CAM benefit.

The higher the SOIA Rate, the greater the projected AMPP lump sum and Special Offset Annuity and, thus, the larger the Special Offset. Stated otherwise, the higher the SOIA Rate, the smaller the CAM benefit after application of the Special Offset.

The June 2004 SMM for the Plan explains that the "Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP." See June 2004 SMM (PX16). This statement is reiterated in a Leapfrog (7) Discussion Summary of the Special Offset Sroka e-mailed to Stewart on 6/24/04. See 6/24/04 e-mail from Sroka to Stewart and attachments thereto (PX41).

According to a Power Point Presentation SBC officers and benefits personnel made to Stewart and four of the Endorsers on 10/17/03, the "pension trust's actual earnings performance" from the time the AMPP lump sum was paid through January 1, 2003 equaled "+45%." See 10/17/03 Power Point Presentation at p. 9 (PX32, Bates KS3076), and e-mails to Stewart and the Endorsers identifying the SBC officers and benefits personnel who participated in the Power Point Presentation (PX30 and PX31).

For the projection period through December 31, 2003, the SOIA Rates listed in the 4/27/04 Amendment and two subsequent Amendments (collectively, "The Amendments") ranged between 95.7061% and 55.7122% for Participants who received their AMPP lump sum in 1996 or the first half of 1997. See again PX12, PX13 and PX14, or Table above. The SOIA Rates are unreasonable for at least three reasons.

First, the SOIA Rates listed in The Amendments significantly exceed the Plan's "actual" +45% earnings from the time the AMPP lump sum was paid through January 1, 2003. 10/17/03 Power Point Presentation at 9 (PX32). In fact, for the projection period through December 31, 2003, the SOIA Rates for Participants who received their AMPP lump sum in January 1996 (95.7061%), July 1996 (94.7833%), or August 1996 (91.0774%) [Stewart] are more than double the Plan's +45% "actual" earnings through January 1, 2003, making them extremely unreasonably high. See Table above; and 10/17/03 Power Point Presentation at p. 9 (PX32, Bates

KS3076).[5]

Second, the Plan's earnings for certain periods could not possibly have differed by the percentages suggested by the SOIA Rates. For example, for the projection period through December 31, 2003, the SOIA Rate for Participants who received their AMPP lump sum in July 1996 is 94.7833%, but only 72.3740% for Participants who received their AMPP lump sum just a few months later in November 1996. See again Table above. Since these rates purportedly represent the rate of return on Plan assets from the month of payment of the AMPP lump sum through December 31, 2003, this would suggest a rate of return of 13.0004% between July 1996 and November 1996. See Supplemental Information from Actuary David R. Fleiss (PX54). A 13.0004% rate of return for this four-month period is implausible because, during this same period, the Standard & Poor 500 ("S&P 500") produced a return of only 5.1642%. Id.

Third, the SOIA Rate exceeds the rate Ameritech utilized to derive an actuarially equivalent age-65 AMPP annuity from the Defined Lump Sum under the AMPP and, thus, violates the actuarial equivalence rules under ERISA §204(c)(3) and Code §411(c)(3). For Stewart, the SOIA Rate is (i) 91.0774%

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[5] SBC exacerbated this problem by using for Stewart the July 1996 SOIA rate of 94.7833% for the period before January 1, 2004, rather than August 1996 SOIA Rate of 91.0774%, as required under the 4/27/04 Amendment for Leapfroggers like Stewart who received their AMPP lump sum in August 1996. See 6/24/04 CAM estimates for Stewart (PX41 at Bates KS 3112 n.1). In fact, it appears that SBC used the August SOIA Rate only with respect to the 6/14/05 CAM estimates for Stewart (PX 47).

for the period 8/1/96 (the date Stewart received her AMPP lump sum) through 12/31/03 (7.42 years), which equates to an average annual rate of 9.1229% for that period, and (ii) a fixed 8.5% rate for the period thereafter. See 4/27/04 Amendment (PX12). However, according to the AMPP Final Benefit Statement for Stewart (PX3), Ameritech used the Pension Benefit Guarantee Corporation ("PBGC") rate of 4.5% rate to derive Stewart's actuarially age-65 AMPP annuity from the Defined Lump Sum under the AMPP. More specifically, according to actuary David Fleiss, Ameritech used the PBGC "immediate" rate of 4.5% for the period at and after normal retirement age and the PBGC "deferred rates" [4% in Stewart's case] for the before normal retirement age, making the overall rate used to derive Stewart's age-65 AMPP annuity 4.137%. See Supplemental Information from actuary David R. Fleiss (PX54). Thus, the SOIA Rate exceeds the rate Ameritech utilized to derive Stewart's actuarially equivalent age-65 AMPP annuity by (i) nearly 5% for the period 8/1/96 to 12/31/03, and (ii) over 4% for the period thereafter.[6]

---

[6] On August 27, 2004 and September 9, 2004, Stewart sent letters to the Pension Service Center, requesting information about the SOIA Rates. See PX43, PX44 and PX45. In one letter, Stewart advised that, via the 10/17/03 Power Point Presentation (PX 32 at p.9), the Endorsers were informed that the Plan's earnings were approximately 45% from July 1996 through January 2003, but that at a June 25, 2004 meeting, they were informed that the Plan's earnings for that period were 94.78% - more than double the earnings represented just eight months earlier. See PX44. Stewart requested that the Pension Service Center provide her with the Plan's actual earnings for each year from 1996 through 2003. Id. The Pension Service Center failed to provide this information, responding only that the 45% earnings represented in the Power Point Presentation was an estimate by "the

In sum, the SOIA Rates are unreasonable because (i) they exceed the Plan's actual +45% earnings from the time the AMPP lump sum was paid through January 1, 2003, (ii) the difference in SOIA Rates from month to month is implausible, and (iii) the SOIA Rates exceed the rate Ameritech utilized to derive an actuarially equivalent age-65 annuity from the Defined Lump Sum under the AMPP. See also Report of Actuary David R. Fleiss (PX53) (concluding that the SOIA Rates violate the anti-forfeiture rules under ERISA §203(a) and Code §411(a) and enforcing Treasury Regulation 1.411(a)-4).

Relief Requested

(1) Calculate the Special Offset using a SOIA Rate that is the lower of (a) the interest rate utilized to derive Stewart's actuarially equivalent age-65 AMPP annuity from the Defined Lump Sum, and (b) the interest rate that reflects the earnings on the assets in the trust(s) for the AMPP during the projection period; and

(2) Produce the documents that show the earnings on the assets in the trust(s) for the AMPP from January 1996 through the present.

. . . . . .

---

actuaries" and that "SBC Treasury" had later provided actual month-by-month earnings that were "more accurate." See PX46. On March 17, 2006, Stewart renewed her request for actual year-by-year pension trust earnings and, in addition, requested the documents SBC had relied upon to determine the SOIA Rates. See PX48. SBC General Counsel Claude Sisson responded on May 16, 2006, advising that the documents would not be produced. See PX49.

Claim III - Violation of ERISA's Actuarial-Equivalence Rules With Respect to the Special Offset

Pursuant to ERISA §204(c)(3) and Code §411(c)(3), commonly known as the actuarial equivalence rules, "in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age . . . the employee's accrued benefit . . . shall be the actuarial equivalent of such benefit or amount." 29 U.S.C. §1054(c)(3) (emphasis added); and 26 U.S.C. §411(c)(3) (emphasis added). These actuarial equivalence rules dictate that the *same* interest rate and mortality table Ameritech used to derive Stewart's age-65 AMPP annuity from the Defined Lump Sum under the AMPP be used to derive an actuarially equivalent annuity for any other age. See 26 C.F.R. §1.401(a)(4)-12 (defining actuarial equivalent); Actuarial Standard of Practice No. 4 (defining actuarial equivalent) (part of PX53); and Employee Benefit Plans: A Glossary of Terms 3 (9th ed. 1997) (defining actuarial equivalent) (part of PX53).

Under the AMPP, the actuarial assumptions for deriving an actuarially equivalent age-65 annuity from the Defined Lump Sum under the AMPP were (i) for termination dates before July 1, 1999, the rates that would be used by the PBGC to value lump sum benefits, as effective on the first day of the Plan Year (January 1) that the Participant terminated employment, and an adjusted UP 1984 Mortality Table, and (ii) for termination dates on and after July 1, 1999, the 30-year Treasury rate for November of the

preceding year (e.g., the 30-year Treasury rate for November 1998 for distributions in 1999) and mortality table prescribed by the IRS (i.e., the 1983 Group Annuity Mortality Table until December 31, 2001 and the 1994 Group Annuity Reserving Table thereafter). AMPP §5.1(b) (PX1); and SPD for AMPP at p. 1 (PX2).

Stewart received her lump sum from the AMPP in 1996. Therefore, her age-65 AMPP annuity was derived from the Defined Lump Sum using the PBGC rates for January 1, 1996, which were the PBGC "immediate" rate of 4.5% for the period at and after age 65, and the PBGC "deferred" rates of 4.0% for the period before age 65. See also AMPP §5.1(b) (PX1) (describing the PBGC immediate and deferred rates); AMPP Final Benefit Statement for Stewart (PX3) (noting use of 4.5% PBGC rate); and Supplemental Information from actuary David R. Fleiss, clarifying that Ameritech used the PBGC "immediate" rate of 4.5% for the period at and after age 65, and the PBGC deferred rates [4% in Stewart's case] for the period before age 65 (PX54). As explained in Claim II, the SOIA Rate exceeds these PBGC interest rates. Therefore, the Projected AMPP Annuity will not be actuarially equivalent to, but will exceed, the value of Stewart's age-65 AMPP annuity, thereby violating ERISA §204(c)(3)'s actuarial equivalence rule.

This actuarial equivalence violation will be exacerbated if the rate used to convert the projected AMPP lump sum into an annuity (the Special Offset Annuity) exceeds the rate Ameritech utilized to derive Stewart's age-65 annuity from the Defined Lump Sum under the AMPP. According to the 4/27/04

Amendment, the interest rate for converting the projected AMPP lump sum into an annuity is the "GATT Basis" interest rate as of the date the Participant terminates employment. The Plan defines the GATT Basis rate as the 30-year Treasury rate during the middle month of the previous calendar quarter. Plan §2.1 (PX6). Because the 30-year Treasury rate changes monthly, it could exceed the rate Ameritech utilized to derive Stewart's age-65 AMPP annuity from the Defined Lump Sum under the AMPP, in which case it could not be utilized without further violating ERISA's actuarial equivalence rule.

The actuarial equivalence violations inherent in the Special Offset assumptions are illustrated by Stewart's 6/14/05 CAM estimate, which shows a Special Offset Annuity of **$3,900.40**/month at age 63. See PX47. That is **$1,500/month** more than Stewart's age-65 AMPP annuity ($2,400.61/ month) (PX 3)! While common sense and logic alone dictate that an actuarially equivalent AMPP annuity at any age before age 65 will be less than (not more than) Stewart's age-65 AMPP annuity, this conclusion is confirmed by Stewart's Final Benefit Statement from Ameritech, which shows that her AMPP annuity at age 43 would equal $545.87; i.e., it would be less than her age-65 AMPP annuity.

In sum, the SOIA Rate for projecting the lump sum Stewart received from the AMPP and the interest rate for converting that projected lump sum into an annuity will result in a Special Offset Annuity that exceeds the actuarial equivalent value of Stewart's age-65 AMPP annuity, thereby violating the actuarial equivalence rules under ERISA §204(c)(3) and Code

§411(c)(3).

The only actuarial assumptions under the Special Offset methodology that will not cause the Plan to violate the actuarial equivalence rule under ERISA §204(c)(3) are the interest rates and mortality table Ameritech utilized when it derived the age-65 AMPP annuity from the Defined Lump Sum under the AMPP.

Relief Requested

Calculate the Special Offset Annuity using, for both the projection period and conversion of the projected AMPP lump sum, the same interest rates and mortality table Ameritech used to derive the age-65 AMPP annuity from the Defined Lump Sum under the AMPP.

Respectfully submitted,

Eva T. Cantarella, Esq.
Attorney for Kathleen A. Stewart

ETC/etc
cc: Kathleen A. Stewart (w/PX52 through PX54)

PX23–Report of Actuary David R. Fleiss (w/attachments thereto)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Kathleen A. Stewart, individually and on behalf of all others similarly situated,
Plaintiff, Case No. 5:07-cv-318-OLG
AT&T Inc. (f/k/a SBC Communications Inc.), and AT&T Pension Benefit Plan-NonBargained Program (f/k/a SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program),
Defendants. Hon. Orlando L. Garcia

REPORT OF ACTUARY DAVID R. FLEISS - PREPARED ON BEHALF OF PLAINTIFF KATHLEEN A. STEWART

I, David R. Fleiss, submit this Report on behalf of Plaintiff Kathleen A. Stewart ("Stewart") and in support of Counts I, II and III of the Complaint. All numbered Exhibits denoted in this Report as PX _ were filed with Stewart's brief opposing defendants' motion to dismiss.

Count I

In my opinion, the offsets created by the April 27, 2004 Amendment to the AT&T Pension Benefit Plan-NonBargained Program (f/k/a SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program) ("Plan") (PX12) violate the Plan's anti-reduction provisions and the anti-cutback rules under §204(g) of the Employee Retirement Income Security Act ("ERISA") and §411(d)(6) of the Internal Revenue

Code ("Code"). In forming my opinion, I considered (i) 29 U.S.C. §1054(g), (ii) 26 U.S.C. §411(d)(6), (iii) Treasury Regulations 1.411(a)-7, 1.411(d)-3 and 1.411(d)-4 (26 C.F.R. §§1.411(a)-7, 1.411(d)-3, and 1.411(d)-4), which enforce the foregoing statutes, (iv) the allegations in Count I of the Complaint, (v) Central Laborers' Pension Fund v. Heinz, 541 U.S. 739 (2004); and (vi) Stewart's Exhibits PX1 through PX19, PX32, PX41 , PX42, PX44, and PX47 through PX51. I may use these statutes and regulations, case, and Exhibits to
support my opinion in the event I am called upon to give testimony in this case.

Count II

In my opinion, the Special Offset interest rates set forth in the April 27 , 2004 Amendment (PX12) and two subsequent Amendments to the Plan (PX13 and PX 14) violate the anti-forfeiture rules under ERISA §203(a), Code §411(a), and enforcing Treasury Regulation 1.411 (a)-4. In forming my opinion, I considered (i) 29 U.S.C. § 1053(a), (ii) 26 U.S.C. §411(a), (iii) 26 C.F.R. § 1.41 1 (a)-4), (iv) the allegations in Count II of the Complaint, and (v) Stewart's Exhibits PX1 through PX19, PX32, PX41, PX42, PX44, and PX47 through PX51. These statutes, the regulation and Exhibits, and information that is publicly available regarding returns in the Standard and Poor 500 will be used to support my opinion in the event I am called upon to give testimony in this case.

Count III

In my opinion, the Special Offset interest rates set forth in the April 27, 2004 Amendment (PX12 and two subsequent Amendments to the Plan (PX13 and PX14)

violate the actuarial equivalence rules under ERISA §204(c)(3) and Code §411(c)(3). In forming my opinion, I considered (i) 29 U.S.C. §1054(c)(3), (ii) 26 U.S.C. §411(c)(3), (iii) 26 C.F.R. §1.401(a)(4)-12 (defining actuarial equivalent), (iv) Actuarial Standard of Practice No.4 ("ASOP No.4"), as approved by the Actuarial Standards Board (defining Actuarially Equivalent and Actuarial Present Value) (attached hereto), (v) Employee Benefit Plans: A Glossary of Terms 3 (9th ed.) ("Glossary") (defining actuarial equivalent) (pertinent pages attached hereto), (vi) Miller v. Xerox Corp. Retirement Income Guarantee Plan, 464 F.3d 871 (9th Cir. 2006), *cert den'd* 127 S.Ct. 1829 (2007), and (vii) Stewart's Exhibits PX1 through PX19, PX32, PX41, PX42, PX44, and PX47 through PX51. These statutes, the regulation, ASOP No.4, pertinent Glossary pages, case, and Exhibits will be used to support my opinion in the event I am called upon to give testimony in this case. I may also refer to Bowers, et al., *Actuarial Mathematics,* 2nd ed. (Schaumberg: Society of Actuaries, 1997) or Jordan, *Life Contingencies,* 2nd ed. (Chicago: Society of Actuaries, 1967).

My Qualifications

I am an Associate of the Society of Actuaries, an Enrolled Actuary, a Fellow of the Conference of Consulting Actuaries, and a Member of the American Academy of Actuaries. I have more than 20 years of actuarial experience with defined benefit pension plans, including floor-offset arrangements and cash balance plans. In addition, I have made numerous presentations before audiences of actuaries and other benefits professionals, including the Institute of Management and Labor Relations at Rutgers

University, the Enrolled Actuaries Meeting, and the annual meetings of the Conference of Consulting Actuaries and the American Academy of Actuaries. I have served on the Annual Meeting Committee of the Conference of Consulting Actuaries and am the Chairperson of the Pension Committee of the Actuarial Standards Board.

My Compensation

Hertz Schram PC has agreed to pay me at the rate of $350/hour for time I expend on this case providing testimony or otherwise.

Other Cases in Which I Have Testified as an Expert at Trial or by Deposition in the Past the Past Four Years

None.

Signed this 13th day of August, 2007
David R. Fleiss

A-115

ACTUARIAL STANDARDS BOARD

Actuarial Standard of Practice No.4

Measuring Pension Obligations

Reformatted by the
Pension Committee of the
Actuarial Standards Board
1993

Approved for Publication by the
Actuarial Standards Board
October 1993

(Doc. No. 046)

Appendix II-Pension Actuarial Terminology
Section A-Core Terms

A- 1. Actuarial Present Value

The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of Actuarial Assumptions. For purposes of this standard, each such amount or series of amounts is:

a. adjusted for the probable financial effect of certain intervening events (such as changes in compensation levels, Social Security, marital status, etc.),

b. multiplied by the probability of the occurrence of an event (such as survival, death, disability, termination of employment, etc.) on which the payment is conditioned, and

c. discounted according to an assumed rate (or rates) of return to reflect the time value of money.

A-2. Actuarial Cost Method or Funding Method

A procedure for determining the Actuarial Present Value of pension plan benefits and expenses and for developing an actuarially equivalent allocation of such value to time periods, usually in the form of a Normal Cost and an Actuarial Accrued Liability.

Note: An Actuarial Cost Method is understood to be a Closed Group Actuarial Cost Method unless otherwise stated.

A-3. Normal Cost or Normal Actuarial Cost

That portion of the Actuarial Present Value of pension plan benefits and expenses which is allocated to a valuation year by the Actuarial Cost Method.

Note 1: The presentation of Normal Cost should be accompanied by reference to the Actuarial Cost Method used.

Note 2: Any payment in respect of an Unfunded Actuarial Accrued Liability is not part of Normal Cost (see Amortization Payment).

Note 3: For pension plan benefits which are provided in part by employee contributions, Normal Cost refers to the total of employee contributions and employer Normal Cost unless otherwise specifically stated.

A-4. Actuarial Accrued Liability, Actuarial Liability, Accrued Liability, or Actuarial Reserve

Appendix II-Pension Actuarial Terminology
Section C-Supplemental Glossary

C-1. Accrued Benefit or Accumulated Plan Benefit

The amount of an individual's benefit (whether or not vested) as of a specified date, determined in accordance with the terms of a pension plan and based on compensation (if applicable) and service to that date.

C-2. Actuarial Assumptions

Assumptions as to the occurrence of future events affecting pension costs, such as: mortality, withdrawal, disablement and retirement; changes in compensation and Government provided pension benefits; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the Actuarial Value of Assets; characteristics of future entrants for Open Group Actuarial Cost Methods; and other relevant items.

C-3. Actuarial Valuation

The determination, as of a valuation date, of the Normal Cost, Actuarial Accrued Liability, Actuarial Value of Assets, and related Actuarial Present Values for a pension plan.

C-4. Actuarially Equivalent

Of equal Actuarial Present Value, determined as of a given date with each value based on the same set of Actuarial Assumptions.

C-5. Amortization Payment

That portion of the pension plan contribution which is designed to pay interest on and to amortize the Unfunded Actuarial Accrued Liability or the Unfunded Frozen Actuarial Accrued Liability.

C-6. One-Year Term Cost

The Actuarial Present Value, as of a valuation date, of all benefits expected to become payable in the future as a result of an event or events expected to occur during a valuation year.

C-7. Open Group/Closed Group

Terms used to distinguish between two classes of Actuarial Cost Methods. Under an Open Group Actuarial Cost Method, Actuarial Present Values associated with expected future entrants are considered; under a Closed Group Actuarial Cost Method, Actuarial Present Values associated with future entrants are not considered.

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Employee Benefit Plans:

A Glossary of Terms

Ninth Edition

A-121

Employee Benefit Plans: A Glossary of Terms

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1997

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Foreword

Employee Benefit Plans: A Glossary of Terms was compiled initially in 1975 to bring together, in one volume, terms applicable to the employee benefits field. The present edition has been expanded to include more than 2,500 definitions derived from current Canadian and U.S. sources covering the following:

Accounting
Actuarial science
Compensation
Employee benefits design and administration
Government regulations and legislation
Health care and health care cost-containment strategies
Human resources
Insurance
International benefits management
Investments
Labor and business law
Labor relations.

A special feature of the ninth edition is an updated list of almost 800 acronyms and abbreviations, covering a wide range of benefits-related topics.

This glossary is designed to provide a practical, easy-to-use guide to terminology presently used in the context of employee benefits. It is intended to provide assistance and should not be viewed as a definitive source. We have made every effort to present accurate and up-to-date information. The employee benefits area is complex and rapidly changing, and it would be impossible to include every applicable term and

acronym. Therefore, use the glossary as a resource, not as an authority. Users should refer to standard texts and reference works for more detailed analyses of the definitions presented. Seek professional assistance in making decisions involving benefit planning and administration.

The International Foundation welcomes feedback for future updates of this glossary. Please contact the Publications Department directly with any suggestions.

for whom the employer would have been obligated to contribute to or under the plan on his or her behalf if any contributions were made to or under the plan, See also Plan Participant.

Activities of Daily Living (ADL)-Activities, such as bathing, dressing and toileting, that are needed for self-care. ADLs are measured to evaluate the continued feasibility of self-care.

Actual Contribution Percentage (ACP)-The average of the ratios of aggregate contributions (matching contributions and after-tax employee contributions) to compensation. It is figured for two groups: highly compensated employees and nonhighly compensated employees. The ratio for each employee is calculated, and then it is averaged for the group. See also Aggregate Limit; Alternative Limitation.

Actual Deferral Percentage (ADP)-The average of the ratios of elective contributions to compensation is figured for two groups: highly compensated employees and nonhighly compensated employees, The ratio first is figured for each employee, and then averaged for each group. See also Aggregate Limit; Alternative Limitation.

Actual Return on Plan Assets (Component of Net Periodic Pension Cost)-The difference between the fair value of plan assets at the end of the period and the fair value at the beginning of the period, adjusted for contributions and payments of benefits during the period.

Actuarial Accrued Liability-
-The actuarial accrued liability of a pension plan at any time is the excess of the present value, as of the date of valuation, of total prospective benefits of the plan (plus administrative expenses if included in the normal cost) over the present value of future normal cost accruals, determined by the actuarial cost method in use.
-That portion, as determined by a particular actuarial cost method, of the actuarial present value of pension plan benefits and expenses that is not provided for by future normal costs. The presentation of an actuarial accrued liability should be accompanied by reference to the actuarial cost method used.

Actuarial Adjustment-The result of offsetting the actuarial gains and losses in an annual actuarial valuation.

Actuarial Asset Value-See Actuarial Value of Assets.

Actuarial Assumptions-Factors used by the actuary in forecasting uncertain future events affecting pension cost. They involve such things as interest and investment earnings, mortality rates and turnover.
Actuarial Cost-A cost is characterized as actuarial if it is derived through the use of present values. An actuarial cost is often used to associate the costs of benefits under a retirement system with the approximate time the benefits are earned.

Actuarial Cost Method-
-A system for determining either the contributions to be made under a retirement plan or the level of benefits when the contributions are fixed. In addition

to forecasts of mortality, interest and expenses) some of the methods involve estimates as to future labor turnover, salary scales and retirement rates. The methods of prime importance are those such as the entry age method, attained age method and unit credit method, which have been recognized by the Internal Revenue Service.

-A recognized technique for establishing the amount and incidence of the actuarial cost of pension plan benefits, or benefits and expenses, and the related actuarial liabilities.

-See also Actuarial Funding Method; Aggregate Actuarial Cost Method; Attained Age Actuarial Cost Method; Entry Age Actuarial Cost Method; Frozen Attained Age Actuarial Cost Method; Frozen Entry Age Actuarial Cost Method; Individual Level Actuarial Cost Method; Individual Spread Gain Actuarial Cost Method; Projection Actuarial Cost Method; Unit Credit Actuarial Cost Method.

Actuarial Cost Method, Open Group/Closed Group-Under an open group actuarial cost method, actuarial present values associated with expected future entrants are considered; under a closed group actuarial cost method, actuarial present values associated with future entrants are not considered.

Actuarial Equivalent-

-If the present value of two series of payments is equal, taking into account a given interest rate and mortality according to a given table, the two series are said to be actuarially equivalent. For example, under a given set of actuarial assumptions, a lifetime monthly benefit of $67.60 beginning at age 60 can be said to be the actuarial equivalent of $100 a month beginning at age

65. The actual benefit amounts are different but the

present value of the two benefits, considering mortality and interest, is the same.
-A benefit having the same present value as the benefit it replaces.
-Of equal actuarial present value.

Actuarial Funding Method-Any of several techniques that actuaries use in determining the amounts and incidence of employer contributions to provide for pension benefits.

Actuarial Gain or Loss-The effects on actuarial costs of deviations or differences between the past events predicted by actuarial assumptions, and the events that actually occurred. An *actuarial gain* results where the actual experience under the plan is more favorable than the actuary's estimate, while an *actuarial loss* reflects an unexpectedly adverse deviation.

Actuarial Liability-See Actuarial Accrued Liability; Projected Benefit Liability.

Actuarial Present Value (APV)-The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions.

Actuarial Reduction-The reduction in the normal retirement benefit that offsets a cost increase to the

plan when a participant retires ahead of schedule.

Actuarial Report-
-An actuary's report to the company recommending how much to contribute yearly to the pension fund to fund promised benefits.
-A report filed with the IRS by the administrator of a defined benefit pension plan that is subject to the minimum funding standards of ERISA.

Actuarial Reserve Deficiency-The excess of the actuarial accrued liabilities at the date of valuation of the retirement system over the available assets on hand to meet such liabilities; or the excess of accrued and prospective liabilities over the present and prospective assets.

Actuarial Reserve Plan-A method of financing a retirement plan where reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay future benefits for the term of the benefit payments.

Actuarial Revaluation Gains or Losses-The effects on actuarial costs of adopting different actuarial cost methods or making changes in actuarial assumptions as to future events.

Actuarial Soundness-
-An actuarial concept relating to the degree of assurance (existing under an employer's program for funding pension cost) that the funds set aside under a pension plan will be sufficient to meet the pension payments provided for in the plan. Actuaries have not

defined objective standards for determining actuarial soundness.
-The statement that the money set aside under a pension plan will be sufficient to meet the pension payments as calculated.

Actuarial Table-A listing of assumed rates of decrement for death, disability, retirement and withdrawal from service according to age and sex. The table may consist of mathematical functions derived from the rates of probability combined with an interest discount factor.

Actuarial Valuation-
-An examination of a pension plan to determine whether contributions are being accumulated at a rate sufficient to provide the funds out of which the promised pensions can be paid when due. The valuation shows the actuarial liabilities of the plan and the applicable assets.
-The determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets and related actuarial present values for a pension plan.

Actuarial Value of Assets-The value of cash, investments and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation. The statement of actuarial assumptions should set forth the particular procedures used in determining this value.

Actuarially Reduced Annuity-See Actuarial Equivalent.

Actuary-
--(Pension) A person professionally trained in the technical and mathematical aspects of insurance, pensions and related fields. The actuary estimates how much money must be contributed to a pension fund each year in order to support the benefits that will become payable in the future.
--(Insurance) A person trained in the insurance

PX24–Supplemental Information from Actuary David R. Fleiss w/ attached Interest Rate Comparisons

SUPPLEMENTAL INFORMATION FROM ACTUARY DAVID R. FLEISS PREPARED ON BEHALF OF KATHLEEN A. STEWART

I, David R. Fleiss, submit this Supplemental Information on behalf of Kathleen A. Stewart ("Stewart") and in support of her Claims for additional benefits under the AT&T Pension Benefit Plan-NonBargained Program (f/k/a SBC Pension Benefit Plan and SBC Pension Benefit Plan-NonBargained Program) ("Plan") (PX12). All numbered Exhibits denoted in this Report as PX _ are attached to Stewart's Claims for additional benefits under the Plan.

Special Offset Interest Adjustment Rate ("SOIA Rate")

In my opinion, it is unlikely that the Special Offset Interest Adjustment Rate ("SOIA Rate") introduced in the April 27, 2004 Amendment (PX12) and supplemented in two subsequent Amendments to the Plan (PX13 and PX14) "recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distributions and approximates the asset recapture by the pension trust had lump sum repayments been allowed" in all periods, as SBC has described the SOIA Rates. See 6/24/02 e-mail from Susan Sroka to Stewart and attachments thereto (PX41); see also June 2004 Summary of Material

Modifications (PX16).

The SOIA Rate consists of two components: a variable rate specified in the plan for the period between the date of the prior lump sum distribution and December 31, 2003 and a fixed rate of 8.50% per year for the period between January 1, 2004 and the participant's date of termination. The variable SOIA Rate depends on the month and year in which a participant's AMPP lump sum was paid.

If, in fact, the variable SOIA Rate approximates the cumulative investment return earned by the pension trust from the date a participant's AMPP lump sum was paid through December 31, 2003, the investment return for any intermediate period from Date 1 to Date 2[1] can be calculated by use of the following equation:

$$\frac{1 + \text{Variable SOIA Rate for Lump Sum Distributions Paid on Date 1}}{1 + \text{Variable SOIA Rate for Lump Sum Distributions Paid on Date 2}} - 1$$

Accepting as true for the moment SBC's assertion that the variable SOIA Rate is approximately equal to the cumulative investment return earned by the pension trust, the approximate investment return earned between July 1996 and November 1996 would be calculated as follows:

1. From section 17.2 of the Plan, as amended (PX12, PX13, and PX 14):

[1] Date 1 and Date 2 are both dates during the period between the date a participant's AMPP lump sum was paid and December 31, 2003.

Month / Year of Prior Lump Sum Distribution	Interest Rate
...	...
July 1996	94.7833%
...	...
November 1996	72.3740%
...	...

2. Using the equation shown above:

$$\frac{1 + 94.7833\%}{1 + 72.3740\%} - 1 = \frac{1.947833}{1.723740} - 1 =$$

1.130004 – 1 = 0.130004 = 13.0004%

Thus, if the variable SOIA Rate is the approximate investment return, as it has been represented by SBC, the trust earned approximately 13% during the four-month period from July 1996 to November 1996.

Is such an investment return plausible? As shown below, during the period in-question, July 1996 to November 1996, the return on the Standard & Poor's 500 Index[2] was 5.1642% and the Russell 3000 Index[3] was 4.1441 %.

1. Monthly returns on the Standard & Poor's 500 and the Russell 3000:

Month	S&P 500	Russell 3000
July 1996	-4.575%	-5.355%
August 1996	1.881%	2.790%
September 1996	5.420%	5.276%
October 1996	2.610%	1.685%

2. To calculate the return during the period from July 1996 to November 1996:

S&P 500

(1 + -4.575%) x (1 + 1.881%) x (1 + 5.420%) x (1 + 2.610%) - 1 =

---

[2] The Standard & Poor's 500 Index comprises over 70% of the total market capitalization of all stocks traded in the U.S. It consists primarily of leading companies from a wide variety of different economic sectors. Because the index is weighted by market capitalization, the largest films have the greatest impact on the S & P value.
See http://www.streetauthority.com/terms/index/sp500.asp (copy attached).

[3] The Russell 3000 Index includes the 3000 largest and most liquid stocks based and traded in the U.S. The components of the Russell 3000 Index account of roughly 98% of the total value of all equity traded on U.S. exchanges. The index captures virtually the entire return posted by U.S.-based stocks.
See http://www.streetauthouty.com/terms/index/russell3000.asp (copy attached).

$$0.95425 \times 1.01881 \times 1.05420 \times 1.02610 - 1 =$$

$$1.051642 - 1 = 0.051642 = 5.1642\%$$

Russell 3000

$$(1 + -5.355\%) \times (1 + 2.790\%) \times (1 + 5.276\%) \times (1 + 1.685\%) - 1 =$$

$$0.94645 \times 1.02790 \times 1.05276 \times 1.01685 - 1$$

$$1.041441 - 1 = 0.041441 = 4.1441\%$$

It is difficult to reconcile SBC's assertion that the trust fund's approximate investment earnings between July 1996 and November 1996 was 13% with the returns of 5.1642% on the S & P 500 Index and 4.1441% on the Russell 3000 Index.

In fact, as the attached exhibit shows, the variable SOIA Rate for every AMPP lump sum payment date through December 31, 2003 exceeds the comparable rates for both the S & P 500 Index and the Russell 3000 Index, often by considerable margins.

Calculation of AMPP Accrued Benefit

When Stewart ceased to be an employee of Ameritech Services, Inc. ("Ameritech"), Ameritech calculated her Accrued Benefit under the Ameritech Management Pension Plan ("AMPP"). In accordance with the terms of the AMPP, Stewart's Accrued Benefit was a monthly age 65 amount determined by dividing her Defined Lump Sum ($110,450.36) by a Deferred Factor (3.8341), and then dividing by 12. See

AMPP Final Benefit Statement for Stewart (PX3).

The AMPP defines the Deferred Factor as

> a factor equal to the actuarially equivalent present value of an annuity which begins at age 65 based on the deferred interest rates used by the Pension Benefit Guaranty Corporation ("PBGC") in order to value lump sum benefits under a single-employer defined benefit plan, as effective for the first day of the calendar year in which the Participant's Termination Date occurs, and the "Plan Mortality Table" determined by averaging the UP 1984 Mortality Table set forward one (1) year and the UP 1984 Mortality Table set back four (4) years. See section 5.1 (b) of the AMPP (PX1).

Stewart's employment at Ameritech ended in 1996. The PBGC lump sum interest rates in effect on January 1, 1996 were an immediate interest rate of 4.50% and a deferred interest rate of 4.00%[4] See 29 CFR §4022.83 Appendix B to Part 4022: Lump Sum Interest

[4] More precisely, the PBGC lump sum interest rates on January 1, 1996 were an immediate interest rate of 4.50% and deferred interest rates of (a) 4.00% for the first 7 years of the deferral period, (b) 4.00% for the next 8 years of the deferral period, and (c) 4.00% for all subsequent years in the deferral period.

Rates for PBGC Payments. This means that the actuarial present value of an annuity deferred to age 65 is calculated by using an interest rate of 4.00% until age 65 (the deferral period) and 4.50% beginning at age 65.

I prepared the Plan Mortality Table described in the AMPP and, using these PBGC interest rates, independently determined that Stewart's Deferred Factor was 3.8341. Thus, I concluded that Ameritech used both PBGC lump sum interest rates - a deferred rate of 4.00% as well as an immediate rate of 4.50% - to calculate Stewart's Deferred Factor, notwithstanding the fact that the AMPP Final Benefit Statement for Stewart (PX3) shows only the immediate interest rate of 4.50% .

I also determined that, for a person of Stewart's age at the time of the calculation (43 years and 2 months old), the use of a single interest rate of 4.137% and the Plan Mortality Table produces the same Deferred Factor (3.8341) as that produced using the two PBGC lump sum interest rates (an immediate rate of 4.50% and a deferred rate of 4.00%).

By contrast, under the 4/27/04 amendment, the SOIA Rate to be used to adjust Stewart's AMPP lump sum for the period from August 1996 through December 31, 2003 is 91.0774% and 8.50% per year for periods after December 31, 2003. An adjustment of 91.0774% for a period of 7 years and 5 months (from August 1996 through December 31, 2003) is equivalent to an annual rate of 9.1229%, more than twice the rate used by the AMPP to calculate Stewart's Accrued Benefit.

Signed this 10th day of September, 2007,
David R. Fleiss

SUPPLEMENTAL INFORMATION FROM
ACTUARY DAVID R. FLEISS
PREPARED ON BEHALF OF KATHLEEN A. STEWART

	SOIA		S&P 500		Russell 3000		Excess SOIA Return	
	Cumulative Factor	Monthly Return	Monthly Return	Cumulative Factor	Monthly Return	Cumulative Factor	S&P 500	Russell 3000
Jan-96	95.7061%		3.262%	80.528%	2.742%	79.062%	8.408%	9.295%
Jun-96	87.5606%	-3.708%	0.226%	66.178%	-0.499%	63.933%	12.867%	14.413%
Jul-96	94.7833%	1.939%	-4.575%	65.803%	-5.355%	64.755%	17.479%	18.226%
Aug-96	91.0774%	4.415%	1.881%	73.752%	2.790%	74.077%	9.971%	9.766%
Sep-96	82.9980%	0.038%	5.420%	70.544%	5.276%	69.352%	7.302%	8.058%
Oct-96	82.9276%	6.123%	2.610%	61.776%	1.685%	60.865%	13.075%	13.715%
Nov-96	72.3740%	-0.867%	7.338%	57.661%	6.804%	58.199%	9.332%	8.960%
Dec-96	73.8816%	2.589%	-2.151%	46.883%	-1.406%	48.121%	18.381%	17.392%
Jan-97	69.4927%	-0.249%	6.132%	50.112%	5.445%	50.233%	12.911%	12.820%
Feb-97	69.9151%	-2.609%	0.593%	41.439%	-0.106%	42.475%	20.133%	19.259%

Mar-97	74.4663%	2.848%	-4.261%	40.605%	-4.638%	42.627%	24.083%	22.324%
Apr-97	69.6354%		5.841%	46.863%	4.773%	49.563%	15.506%	13.421%
Jun-97	55.7122%	5.957%	4.345%	31.079%	4.028%	33.884%	18.792%	16.304%
Jul-97	46.9578%		7.815%	25.621%	7.637%	28.700%	16.985%	14.186%
Nov-00	5.9304%	3.087%	-8.007%	-22.210%	-9.334%	-20.038%	36.174%	32.475%
Dec-00	2.7586%	2.446%	0.405%	-15.439%	1.579%	-11.806%	21.520%	16.514%
Jan-01	0.3052%	-5.625%	3.464%	-15.780%	3.339%	-13.176%	19.099%	15.528%
Feb-01	6.2838%	-4.760%	-9.229%	-18.600%	-9.262%	-15.982%	30.569%	26.501%
Mar-01	11.5957%		6.420%	-10.323%	-6.591%	-7.406%	24.442%	20.521%

Bolton Partners, Inc.

S&P 500 Index

Overview
The S&P 500 index is probably the most commonly referenced U.S. equity benchmark. This diverse index comprises over 70% of the total market cap of all stocks traded in the U.S. First developed in 1923, the index initially contained 233 stocks. However, in 1957 it was modified to include a diversified basket of 500 common stocks.

Composition
The S&P 500 is not comprised of simply the 500 largest U.S. stocks. Instead, it consists primarily of leading companies from a wide variety of different economic sectors. The index started with 23 identified sectors, but today contains over 100 unique sectors. Most analysts choose to use the S&P as their preferred benchmark index thanks to its diversified sector coverage as well as its market value weighting. Because the index is weighted by market cap, the largest firms have the greatest impact on the S&P's value.

The table below lists the current top ten holdings in the S&P 500 as well as the top ten sectors represented in the index (data as of July 2004):

Company	*Symbol*	*% of Index*	*Sector*	*% of Index*
General Electric	GE	3.2%	Financial Services	20.3%

Microsoft	MSFT	2.9%	Healthcare	13.4%
ExxonMobil	XOM	2.7%	Industrial Materials	12.2%
Pfizer	PFE	2.5%	Hardware	10.8%
Citigroup	C	2.3%	Consumer Goods	9.7%
Wal-Mart Stores	WMT	2.1%	Consumer Services	8.8%
American Intl. Group	AIG	1.8%	Energy	6.5%
Intel	INTC	1.7%	Software	4.5%
Bank of America	BAC	1.6%	Business Services	3.9%
Johnson & Johnson	JNJ	1.6%	Media	3.9%

Positives

This index is probably the single best way to track the overall performance of our nation's largest and most dominant companies. Most investors are familiar with the S&P 500 and the index is extremely liquid.

Drawbacks

Because they are unlikely to qualify due to the index's high market cap requirements, the S&P 500 does not provide investors with exposure to some of the smaller, yet in many cases faster growing, companies on the market. In addition, because it is market value weighted, the largest companies in the index have a disproportionate amount of influence on the S&P 500's results.

http://www.streetauthority.com/terms/index/sp500.asp

How can I trade/invest in this index?
A number of different mutual funds track the performance of the S&P 500. However, the most convenient and cost-effective way to trade this index is to purchase the S&P SPDRs (symbol SPY). This exchange-traded fund, which is commonly referred to as "spyders" or "spiders," tracks the performance of the S&P 500, sports an extremely low 0.12% expense ratio and can easily be bought or sold on the open market just like a regular common stock. For more information on this ETF, please consult our ETF Profiles page.

Additional Information
Standard & Poor?s
AMEX. (American Stock Exchange) SPDRs

Major U.S. Indices
Down Jones Industrials -- S&P 500 -- Nasdaq Composite -- Nasdaq 100 -- Wilshire 5000 -- S&P MidCap 400 -- S&P SmallCap 600 -- Russell 3000 -- Russell 2000 -- Russell 1000

Sector-Based Indices
Semiconductor -- Biotech -- Broker/Dealer -- Transportation -- Utilities -- Gold

International Market Indices
FTSE -- Bovespa -- DAX -- CAC-40 -- Hang Seng -- Straits Times -- KOSPI

http://www.streetauthority.com/terms/index/russell3000.asp

Russell 3000 Index

Overview
Started in 1984, the Russell 3000 Index attempts to capture the return of the overall market. The index can be subdivided into two segments: the Russell 1000 large-cap and Russell 2000 small-cap. The delineation is clear enough--the Russell 1000 represents the 1000 largest stocks in the index (based on market cap), while the remaining 2000 are placed in the Russell 2000. Because of its broad diversification and large number of holdings, this index often makes for a popular alternative to the Wilshire 5000 total market index.

Composition
The Russell 3000 Index is comprised of the 3000 largest and most liquid stocks based and traded in the U.S. The U.S.-based requirement disqualifies many large international firms from inclusion into the index--names such as Unilever, Schlumberger and Seagrams, just to name a few. The components of the Russell 3000 Index account for roughly 98% of the total value of all equity traded on U.S. exchanges, making this a very broad index indeed. The index is market-cap weighted, so the largest firms have the biggest impact on the index?s value. As you can see from the tables below, the index's top 10 holdings are identical to those of the Russell 1000 index (which is simply a subset of this index). However, the overall weighting assigned to these top holdings is slightly lower when it comes to the Russell 3000 (due to its

broader diversification).

Company	*Symbol*	*% of Index*	*Sector*	*% of Index*
General Electric	GE	2.8%	Financial Services	21.2%
Exxon Mobil	XOM	2.3%	Healthcare	13.8%
Microsoft	MSFT	2.1%	Industrial Materials	11.4%
Pfizer	PFE	2.1%	Hardware	10.9%
Citigroup	C	1.9%	Consumer Services	8.8%
Intel	INTC	1.4%	Consumer Goods	8.6%
Bank of America	BAC	1.4%	Energy	6.2%
Johnson & John.	JNJ	1.3%	Business Services	4.7%
American Intl.	AIG	1.3%	Media	4.1%
Cisco Systems	CSCO	1.3%	Telecommu nications	3.2%

Positives

This index captures virtually the entire return posted by U.S.-based stocks. The more stringent requirements for inclusion also probably make it a better representation of the universe of actively traded stocks when compared to the Wilshire 5000.

Drawbacks
Most investors consider the Wilshire 5000 to be the benchmark for total market returns. Even if it includes stocks that are almost impossible to trade, that index contains more equities and thus gets more focus. Although the Russell 3000 gets little attention, its two subsets, the 1000 & 2000, are widely followed. After noticing that large indices consistently lag behind smaller, more focused ones, many investors are beginning to wonder if there is such a thing as ?too much? diversification. Is it only a matter of time before someone launches a ?world index? that contains all equities traded in every country and renders other total market indices obsolete?

How can I trade/invest in this index?
A variety of different mutual funds and ETFs track the Russell 3000 Index. Our favorite way to trade this index is through an investment in the iShares Russell 3000 (symbol IWV). This ETF closely tracks the index's returns, is relatively liquid, and charges an extremely low 0.20% expense ratio. Thanks to its status as an ETF, investors can buy or sell the iShares Russell 3000 anytime during normal trading hours, just like a common stock.

Additional Information
Russell 3000 Index Fact Sheet
iShares Russell 3000 Index Fund (IWV)

Major U.S. Indices
Dow Jones Industrials -- S&P 500 -- Nasdaq Composite -- Nasdaq 100 -- Wilshire 5000 -- S&P MidCap 400 -- S&P SmallCap 600 -- Russell 3000 -- Russell 2000 -- Russell 1000

Sector-Based Indices
Semiconductor -- Biotech -- Broker/Dealer -- Transportation -- Utilities -- Gold

International Market Indices
FTSE -- Bovespa -- CAX -- CAC-40 -- Hang Seng -- Straits Times -- KOSPI

PX25–Administrative Denial of Stewart's Claims

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Cincinnati, OH 45277-0070

Ms. Eva Cantarella
Hertz Schram P.C.
1760 South Telegraph Rd., Suite 300
Bloomfield Hills, Michigan 48302-
0183

Date: March 11, 2008

Re: Claim for Ms. Kathleen A. Stewart

Dear Ms. Cantarella:

We provide administration services with respect to the AT&T Pension Benefit Plan NonBargained Program (the "Plan"). Part of our responsibility to the Plan is to provide a review of all benefit claims. We are in receipt of your claim letter dated September 11, 2007 (the "Claim") (Attachment I) in which you contend, as counsel to and on behalf of Stewart, that Stewart's estimated benefit under the Plan has not been computed properly under the terms of the Plan and applicable law.

As a result of the Claim, we have reviewed the documents you submitted, the provisions of the Plan as described herein, and the additional documents attached hereto. For the reasons described below, we deny the Claim.

I. Relevant Factual Background

A. Stewart's Benefit Under the Ameritech Management Pension Plan ("AMPP")

As indicated in the Claim, Stewart was employed by Ameritech Services, Inc. ("Ameritech") or one of its predecessors from 1971 until June 30, 1996. As such, Stewart was a participant in the AMPP. (PX1). Effective July 1, 1996, Stewart terminated employment with Ameritech and became employed by IBM Global Services ("IBM"). (Att. I).

As a result of her termination of employment with Ameritech, Stewart was offered the choice of receiving a distribution from the AMPP of her accrued benefit under the AMPP either in the form of a lump sum in the amount of $110,450.36, calculated as of July 1, 1996, or in the form of a monthly annuity payable at age 65 in the amount of $2,400.61. She chose the lump sum. (Att. I, PX3).

The Claim does not contest these facts, nor does it contest the accuracy, propriety or any other aspect of the calculations and payment of the AMPP lump sum and/or its equivalent annuity benefit amount under the AMPP.

B. Stewart's Participation in the Plan

On or about October 8, 1999, SBC Communications, Inc. SBC Communications Inc., now known as AT&T Inc. ("AT&T"), acquired Ameritech Corporation, the parent corporation of Ameritech. On or about January 1, 2001, Ameritech became a "Participating Company" in the Plan, as defined by § 2.65 of the Plan's Definitions and Rules for Crediting Service Plan (the "Rules") pursuant to an amendment adopted on December 21, 2000. However, the AMPP was not merged into or with the Plan until December 31, 2004. (PX5). AT&T had up to that point consistently merged similar defined benefit plans sponsored by acquired entities into the Plan. See, for example, Supplement 1 of the AT&T Pension Benefit Plan-Nonbargained Program relating to the PTG Cash Balance Pension Plan for Salaried Employees and Supplement 8 relating to the SNET Management Pension Plan. AT&T intended to and actually did merge the two plans as soon as practical after the expiration of the five year change-in-control period described in Supplement C of the AMPP. On January 31, 2001, a subsidiary of AT&T re-hired Stewart. As indicated in the Claim, Stewart became a "Participant" in the Plan for the first time on or about this date as a result of her employment with a subsidiary of AT&T. (Att. I; see also Plan Definition and Rules § 2.64).

Thereafter, on June 15, 2002, Stewart received estimates of her benefits payable under the Plan. (Att. I, PX19). These estimates were based on the assumption that Stewart's prior service and participation under the AMPP that was used to determine and calculate the lump sum she received from the AMPP would also be used in determining and calculating the amount of her benefit under the Plan.

(Id.) Consistent with this assumption, the estimates reduced the amount of Stewart's benefit otherwise payable under the Plan by the amount of the benefit she had already received from the AMPP. (Id.) Stewart questioned and/or disagreed with these estimates, and there followed a series of communications between Stewart and various individuals from AT&T. (Att I, PX20-40).

II. Stewart's Claim

Although various communications are mentioned in the Claim, and various written communications are attached to the Claim, Stewart does not base any particular aspect of the Claim on such communications. (Att. I). More specifically, Stewart does not claim to have reasonably relied on any such communications. Moreover, the Claim does not rely upon any of these communications as establishing separate terms of the Plan, nor does the Claim indicate that the Plan or its Administrator are estopped or bound by any of these communications. Rather, the Claim is based primarily on an Amendment to the Plan on April 27, 2004 (the "Amendment"), and the Claim focuses upon three separate issues and seeks relief in three principal ways.

First, the Claim contends that Stewart is entitled to a benefit from the Plan that is calculated and based, in part, on her prior service with Ameritech, and that such benefit should not be reduced by the lump sum benefit she received from the AMPP that was calculated and based on the same service. Specifically, Stewart contends that she

accrued a benefit under the Plan before the Amendment, that the benefit she accrued included credit and compensation for service while she was employed by Ameritech, and that the neither the law nor the Plan permit this accrued benefit to be reduced by the amount of the AMPP benefit she received. As such, Stewart contends the Amendment, which confirms that prior plan benefits can and should be taken into account to reduce benefits under the Plan that are based on the same service that produced the prior plan benefit, violates certain "anti-reduction" terms of the Plan and the "anti-cutback rule" embodied in ERISA § 204(g) and the Internal Revenue Code (IRC) § 411(d)(6). (Att. I). This aspect of the Claim is referred to therein as Claim I.

Second, the Claim contends that one of two alternative methods of calculating the specific amount of the offset or reduction in the amount of Stewart's benefit under the Plan pursuant to the terms of the Amendment (the "Special Offset Formula") violates ERISA § 203(a) and IRC § 411(a) (the "anti-forfeiture rules"). Specifically, the Claim contends that the "Special Offset Interest Adjustment Rate" (the "SOIA Rate") is "unreasonably high" and thus results in "an impermissible partial forfeiture" of Stewart's Plan benefit. The Claim contends that the SOIA Rate must be the lower of either (a) the interest rate used to calculate her annuity benefit under the AMPP, or (b) the interest rate that reflects actual earnings on the assets in trust for the AMPP during the period at issue. Presumably in order to confirm that the proper interest rate is being applied, this second aspect of the Claim requests production of documents that would show the earnings on assets in the AMPP trust during

the relevant period. This aspect of the Claim is referred to therein as Claim II.

Third, the Claim contends that the Special Offset Formula violates ERISA § 204(c)(3) and IRC § 411(c)(3) (the "actuarial equivalence rules"). Specifically, the Claim contends that the Special Offset Formula must use the same interest rate and mortality assumptions used to calculate the annuity benefit amount under the AMPP. This aspect of the Claim is referred to therein as Claim III.

III. Initial Determination of Stewart's Claim

Each of these three aspects of the Claim is denied for the reasons explained below.

Claim I - Stewart's Benefit Under the Plan Has Not Been Improperly Reduced or Cutback.

As an initial matter, we do not find any language or terms of the Plan that support Stewart's claim that she accrued duplicative benefits under the AMPP and the Plan for her service while employed with Ameritech. If we were to agree with Claim I, it would mean Stewart and other similarly situated participants who left Ameritech, received a lump sum or other benefit from the AMPP, and then returned to employment with Ameritech or AT&T (or a subsidiary of AT&T) after it acquired Ameritech, are entitled to a duplicative benefit for the same service, and indeed such participants would be entitled to a larger benefit than an employee of Ameritech who never terminated her employment. We find no support for this unusual and unreasonable interpretation of the plan sponsor's

intent, either in the terms of the Plan or elsewhere. To the contrary, the Plan's terms very specifically prevent duplicative benefit accruals and/or payments for the same service, both with regard to Stewart and participants who had prior service that earned them benefits under other plans.

In addition, once the AMPP was merged with and into the Plan, the AMPP became part of the Plan, and any benefits previously paid by the AMPP became benefits paid by the Plan. After the merger, any additional benefit obligation resulting from the merger was satisfied, in part, by the prior payment of Stewart's AMPP lump sum. Thus, Stewart is only entitled to payment of the benefit payable under the Plan's terms as properly reduced by the benefit already paid to her by the AMPP, which is now part of and merged with the Plan. The specific Plan terms that support this determination are described below.

As noted in the Claim, the Plan has alternative formulas for calculating benefits. The primary formula is the Updated Career Average Minimum ("CAM"), as set forth in Supplement 12 to the Plan.[1] Specifically, Supplement 12 states: "Notwithstanding anything in the [Plan] to the contrary, the accrued monthly benefit of any CAM Participant[2], as defined below, shall not be

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[1]The other alternative formula that would apply to Stewart is the "CB Normal Pension" as defined in § 4.2.1(a)(1) of the Plan. Because Stewart's CAM Benefit is larger than her CB Normal Pension, the terms of the Plan applicable to CAM are at issue and controlling here. (§ S12.3)

[2]The term "CAM Participant" is defined as follows:
"CAM Participant" shall mean any Participant who

less than the CAM Benefit as defined below." The term "CAM Benefit" is defined as "the Updated Career Average Minimum benefit calculated in accordance with Section 2 below." Section S12.2 in turn defines "Updated Career Average Minimum Benefit" as of a CAM Participant's Normal Retirement Age (65 per Rule 2.62) as "1.6% times CAM Income divided by twelve (12), payable as a single life annuity."

One of the key issues for determining Claim I is a proper understanding and interpretation of the term "CAM Income," specifically whether CAM Income includes income Stewart earned while at Ameritech. "CAM Income" is defined in Section S12.1 as follows:

> "CAM Income" shall mean [(a) times (b)] plus (c) but not less than (d) where:
>
> (a) Pension Compensation attributable to time periods during the CAM Averaging period divided by five subject to the following provisions:

(i) has a Termination of Employment on or after June 13,2001,

(ii) is entitled to a nonforfeitable benefit under the Program at such Termination of Employment,

(iii) is not an EPR Terminee,

(iv) is not employed by an Excluded Company at such Termination of Employment,

and

(v) if promoted on or after June 13, 2001, from the Bargained Program, from the Pacific Telesis Group Pension Plan, or the Ameritech Pension Plan, remains continuously employed as a Nonbargained Employee for at least three years before Termination of Employment.

(i) Pension Compensation that is received in the first paycheck following the end of the CAM Averaging Period that is attributable to service during the CAM Averaging Period shall be included.

(ii) The Special Rules for Determining Average Annual Compensation contained in Section 4.2.2(b) of the Nonbargained Program shall be applied

(b) Pension Calculation Service as of the end of the CAM Averaging Period.

(c) Pension Compensation paid after the end of the CAM Averaging Period, but excluding any Pension Compensation included under (a)(i) above.

(d) Pension Compensation paid on or after January I, 1995.

The term "Pension Compensation" is defined in Rule 2.67,[3] which specifies that it is income earned by

---

[3]Rule 2.67 provides as follows:

Effective prior to January 1, 2000, "Pension Compensation" shall mean the total of a Participant's Basic Compensation, Group Incentive Compensation, Nondiscretionary Incentive Compensation, Bellcore Buy Out, and Rotational Compensation, as applicable, for purposes of calculating the Participant's monthly pension benefit under the Plan.

Effective January 1,2000, "Pension Compensation" shall mean the total of a Participant's Actual Base Pay, Group Incentive Compensation, Nondiscretionary Incentive Compensation, and effective January 1, 2000, Individual Discretionary Award for Individual Discretionary Awards payable on or after January 1, 2000, provided, however, that the amount of Compensation taken into account under the Program for any Plan year shall not exceed the maximum Section 401(a)17 compensation limit. Notwithstanding the foregoing, Pension Compensation shall not include compensation which constitutes a signing bonus, retention pay, severance pay, a recognition award, a spot bonus, a premium paid in connection with highly marketable skills, foreign service or other geographic differentials, a relocation allowance or housing allowance, a tax equalizing gross-up, replacement compensation paid in lieu of benefits, awards for contests, sales promotions or market blitzes, a stock option, income generated from the exercise of a long term incentive award, or a benefit payable under the Short Term Incentive Plan.

Effective January 1, 2001, "Pension Compensation" shall mean the total of a Participant's

(a) Actual Base Pay;

(b) Group Incentive Compensation;

(c) Nondiscretionary Incentive Compensation;

(d) Individual Discretionary Awards payable on or after January 1, 2000;

(e) Special Contribution Awards payable on or after January 1,2001, and

(f) the individual component of the Ameritech Team Bonus Plan payable on or after January 1, 2001, pursuant to the Ameritech Management Incentive Plan

Notwithstanding anything in the preceding sentence to the contrary, Pension Compensation shall exclude any (i) signing bonus, (ii) retention pay, (iii) severance pay, (iv) recognition award, (v) spot bonus, (vi) premium paid in connection with highly marketable skills, (vii) foreign service or other geographic differential, (viii) relocation allowance or housing allowance, (ix) tax equalizing gross-up, (x) replacement compensation paid in lieu of benefits, (xi) award for contests, sales promotions or market

a "Participant." As previously noted, the Claim acknowledges that Stewart did not become a Participant in the Plan until 2001, and Stewart was obviously not a Participant in the Plan when she was employed by Ameritech.[4] Rather, Stewart was a participant in the AMPP, not the Plan, while employed by Ameritech. Thus, Pension Compensation, for purposes of calculating Stewart's CAM Income, her Updated Career Average Minimum Benefit, and her CAM Benefit, does not include what she earned at Ameritech.

Another key term in the definition of CAM Income confirms this interpretation. "Pension Calculation Service" is one of the factors used in the CAM Income formula. Rule 2.66.1 defines "Pension Calculation Service" as follows:

"Pension Calculation Service" shall mean an

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blitzes, (xii) stock option, (xiii) income generated from the exercise of a long term incentive award, and (xiv) benefit payable under the Short Term Incentive Plan. The amount of Pension Compensation taken into account under the Program for any Plan Year shall not exceed the maximum amount permitted by Code Section 401(a)17 and its associated regulations.

[4]The term "Participant" is defined in Rule 2.64 as follows:

> "Participant" shall mean an Eligible Employee who has satisfied the participation requirements of the Plan and either (a) is currently employed by a Participating Company, (b) is on a Rotational Assignment from a Participating company to Bell Communications Research, Inc. commencing on or after January 1, 1994 during the period of that Rotational Assignment, or (c) was previously employed by a Participating Company and is entitled to a monthly pension benefit under the Plan in his own right.

> Eligible Employee's period of employment with one or more (a) Participating Companies, (b) Interchange Companies (if an Interchange Agreement requires the Plan to recognize the Eligible Employee's service with an Interchange Company for pension calculation purposes when he becomes an Eligible Employee), and (c) effective January 1, 1994, Bell Communications Research, Inc. during a Rotational Assignment; provided, however, Pension Calculation Service shall not include any period of service for pension calculation purposes while covered under a Prior Bargained Plan to the extent that the amount of the monthly pension benefit under such Prior Bargained Plan is an element in the computation of the Participant's monthly pension benefit under the Plan in accordance with the provisions of Paragraph 4.2.3 of the Plan.

Ameritech was not a "Participating Company" while Stewart was employed by Ameritech; however, it was an "Interchange Company,"[5] and we assume, for purposes of this analysis, that an Interchange Agreement requires the Plan to recognize Stewart's

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[5]The term "Interchange Company" is defined in Rule 2.46 as follows:

> "Interchange Company" shall mean a company, other than a Participating Company, which is a party to an Interchange Agreement and any Subsidiary of such company which participates in a Qualified Pension Plan maintained by any such company or with respect to such Subsidiary such company has an interchange agreement comparable to an Interchange Agreement, but only so long as such interchange agreement is in force and effect.

service. However, this requirement is expressly modified as to Stewart in Rule 2.66.5, which states:

> Notwithstanding any other provision of the Plan, "Pension Calculation Service" shall not include a Covered Employee's[6] period of employment in the service of one or more MPA Interchange Companies[7] that would otherwise be subject to recognition by the Plan in accordance with the provisions of the Mandatory Portability Agreement or any other provision of the Plan, if the Covered Employee has received a lump sum distribution of his pension benefit from an MPA Interchange Company Pension Plan[8] attributable to such a period of employment and the Eligible Employee has not repaid the lump sum distribution to such MPA Interchange Company Pension Plan.

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[6]We do not believe there is any dispute that Stewart is a "Covered Employee" within the meaning of the following definition in Rule 2.19(a)(1): "Covered Employee" shall mean any individual, who (a) on December 31, 1983 was (1) an active employee in a Covered Position at an MPA Interchange Company. The term "Covered Position" is defined in Rule 2.20 as "a job title or position with an MPA Interchange Company for which ... the employee's Annual Base Rate of Pay does not exceed an amount which equals the sum of $50,000 ... "

[7]"MPA Interchange Company" is defined in Rule 2.53 as "any company that is a party to the Mandatory Portability Agreement." Ameritech was an MPA Interchange Company.

[8]The term "MPA Interchange Company Pension Plan" is defined in Rule 2.54 as "a Qualified Pension Plan and its related trust or trusts as applicable, (a) administered by an MPA Interchange Company ... "

Stewart was a Covered Employee while employed with Ameritech, and the AMPP was an MPA Interchange Company Pension Plan. Thus, because Stewart received her lump sum benefit from the AMPP, she does not receive Pension Calculation Service for her period of employment with Ameritech.

This interpretation is further confirmed by other Plan terms. For example, Section 6 of the Rules governs recognition of service credit, including without limitation, Pension Calculation Service, for Covered Employees. Specifically, Rule 6.1.4(c) provides as follows:

> If any Covered Employee is employed by an SBC MPA Company after terminating employment with an MPA Interchange Company (other than an SBC MPA Company) and subsequent to receipt of a lump sum distribution of his accumulated plan benefit under such MPA Interchange Company's MPA Interchange Company Pension Plan, the portion of such Covered Employee's Pension Service Credit[9] constituting benefit accrual service shall not be recognized under the Plan unless and until such Covered Employee repays such lump sum distribution to such MPA Interchange Company Pension Plan in accordance with the terms and conditions of and within the time

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[9]The term "Pension Service Credit" means "the service credit (i.e., period of service) recognized for eligibility for a pension (or participation in a Qualified Pension Plan) and vesting and accrual of such pension benefit under an MPA Interchange Company Pension Plan, other than service credit that would be excluded from Pension Calculation Service." Rule 2.70

> period provided in such plan and the pension obligation and the assets associated with such repayment have been transferred to the SBC Pension Benefit Plan and the Pension Fund.

As with Rule 2.66.5, this section of the Plan clearly prohibits the calculation of Stewart's CAM Benefit in a way that includes her service while at Ameritech.

Likewise, Rule 3.3 explicitly prevents double counting of Pension Calculation Service with regard to a "Former Affiliate Plan." Rule 3.3, entitled, "Service Under a Former Affiliate Plan," reads as follows:

> "Notwithstanding any other provision of Section 3 or 4, but subject to the provisions of any applicable Interchange Agreement in accordance with Section 5, an Employee's pension Eligibility Service and Pension Calculation Service, or Pension Eligibility Service only, as applicable, shall not include any service which is recognized for purposes of determining pension eligibility or amount under a Former Affiliate Plan (or which would be recognized for those purposes but for the break in service provisions of the Former Affiliate Plan), nor shall any service described in this Subsection 3.3 be included in the Employee's Years of Vesting Service unless he satisfies the requirements of Subparagraph 3.1.2(a) or 3.1.2(b), as applicable."

Until its merger with the Plan, the AMPP was a Former Affiliate Plan within the meaning of Rules

2.40 and 2.39.[10]

The only circumstance that permits Stewart's service and compensation at Ameritech to be considered and used to calculate her CAM Benefit is the merger of the AMPP into the Plan. On and after the date of the merger of the AMPP into the Plan, and by that action, Stewart's compensation and service while employed by Ameritech become compensation and service under the Plan. By the same merger, of course, the benefit Stewart received from the AMPP likewise became a benefit paid by the Plan. Thus, the lump sum Stewart received from the AMPP naturally and logically satisfies the benefit obligation under the Plan that is calculated based on Stewart's employment with Ameritech.

The Claim does not consider or address the Plan terms or analysis discussed above, but is instead based on erroneous assumptions and conclusions. For example, based on the benefit estimates sent to Stewart, the Claim assumes that her CAM Benefit prior to the merger of the AMPP into the Plan included both Pension Compensation and Pension Calculation Service earned by Stewart while employed by

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[10]"Former Affiliate Plan" is defined as follows in Rule 2.40:

> "Former Affiliate Plan" shall mean a Qualified Pension Plan and its related trust or trusts, as applicable, maintained by a Former Affiliate, which devolved from, directly or indirectly, and is comparable to the Bell System Pension Plan or the Bell System Management Pension Plan in effect as of December 31, 1983, or comparable to any other Qualified Pension Plan maintained by SBC.

"Former Affiliate" is defined in Rule 2.39 as including American Information Technologies Corporation and its subsidiaries.

Ameritech. As explained above, this is an erroneous assumption and/or interpretation of the applicable Plan terms.

Further, the Claim erroneously contends that prior to the Amendment, "the Plan expressly limited any offset of the CAM Benefit to benefits paid or payable under a Prior Bargained Plan." To the contrary, the Plan was specifically and carefully designed to avoid double counting applicable service and likewise paying a duplicative benefit in all situations where the earlier benefit and service were paid/earned under a separate, distinct plan that was not merged into the Plan. This explains why the language in Rule 2.66.1, § 4.2.6 and § S12.2 refers only to a Prior Bargained Plan. Only in that circumstance would there be a need to specifically refer to an offset or reduction, because only in that circumstance would there be a Participant who would have earned Pension Compensation and Pension Calculation Service pursuant to a separate program under the AT&T Pension Benefit Plan that would not be merged into the Plan. For the reasons explained above, prior to the merger of the AMPP into the Plan, Stewart did not earn Pension Compensation or Pension Calculation Service during her Ameritech employment, so there was no need for such an offset or reduction to apply with regard to her AMPP lump sum.

The Claim also erroneously interprets the Amendment as having "added an offset to the formula for computing the CAM Benefit," and thereby having "reduced the CAM Benefit accrued before the Amendment because the Plan did not previously provide for an offset of the CAM Benefit as to ...

Participants ["like Stewart who received a benefit from a Prior Non-Bargained Plan (e.g. the AMPP)]." To the contrary, the Amendment merely clarified and confirmed the administrative interpretation and practice described above.

Specifically, the Amendment states the following with respect to the "General Benefit Offset":

> Effective September 28, 2001, Section 4.2.6 Pension Benefits Under Other Plans of the Nonbargained program is hereby amended by adding the following at the end thereof:
>
> In no event shall there be any double-crediting of pay or service in calculating the benefit for or on behalf of any Participant hereunder.
>
> General Benefit Offset Provisions
>
> In particular, if both
>
> (i) a Participant has earned service under another plan for which he has received or will be entitled to receive benefits, or has received a lump sum payout from this Plan for a prior period of service (hereinafter, the "Offsetting Benefit") and
>
> (ii) such Participant's benefit in this Plan is calculated including service that was used to calculate the Offsetting Benefit (hereinafter the "Total Service Related Benefit"),
>
> then such Participant shall be entitled to a net benefit from this Plan calculated as the excess, if any, of (A) over (B), where:

(A) the Total Service Related Benefit payable as a Single Life Annuity as of the Normal Retirement Age;

(B) the Offsetting Benefit calculated as a Single Life Annuity as of Normal Retirement Age,

then applying any applicable reductions for early commencement to the net benefit. In the event that the Total Service Related Benefit is payable as a partial lump sum and partial annuity, the offset shall be applied first to reduce any lump sum payable. The Offsetting Benefit shall be calculated as including the value of any special enhancements including, by way of illustration and not by way of limitation, any temporary annuities or early retirement incentives whether or not calculated based on service.

The Amendment specifically contemplates application of an offset only where a Participant has both earned service and received a benefit, from either the Plan or another plan, and their benefit under the Plan is calculated including such service.

This language does not, in fact, change or reduce Stewart's CAM Benefit that was accrued under the Plan as of April 27, 2004. Rather, when the AMPP was merged with the Plan, and Stewart's CAM Benefit properly included her Ameritech compensation and service for the first time, this Amendment merely clarified that her AMPP lump sum, which could then be properly considered a payment of benefits by the Plan, would in fact reduce her CAM Benefit by the

amount she had already received from the Plan.

In sum, for the reasons explained above, Stewart had not, in fact, accrued a CAM Benefit under the Plan prior to the Amendment that was in any way reduced or offset as a result of the Amendment. Her estimates were prepared based on the assumption that the AMPP would eventually be merged with the Plan, resulting in both her Ameritech service and compensation being used to calculate her CAM Benefit and her AMPP benefit being taken into account as partial payment of the resulting CAM Benefit obligation. As the Claim notes repeatedly, all of the benefit estimates provided to Stewart were based on this same assumption, and there are no estimates that indicated Stewart would receive a double benefit based on double compensation or service credit without the appropriate recognition of her prior paid benefits. Indeed, the Claim does not contend Stewart was ever misled or misinformed in this regard.

For all these reasons, the relief requested in Claim I is denied.

Claims II and III - The Special Offset Formula Does Not Violate ERISA § 203(a), IRC § 411(a) or the Plan's Anti-Reduction Terms, Nor Does It Violate ERISA § 204(c)(3) or IRC § 411(c)(3).

Stewart's Claims II and III are denied for the same reasons and therefore are discussed together herein. Claims II and III both contend that the Special Offset Formula violates certain rules in ERISA and the IRC by providing for an offset that is greater than that permitted by law. Claim II also contends that

Plan provisions protecting accrued benefits were also violated. However, it is clear from the Claim that Stewart contends that the Plan's anti-reduction terms require the exact same protection as ERISA § 203(a) and IRC § 411(a) (which in turn, are identical to one another), and We agree that the anti-reduction terms provide the same substantive protection as ERISA § 203(a). Therefore, no separate analysis is necessary with respect to the question of whether the Plan's anti-reduction terms are applicable. If the Special Offset does not violate ERISA, then it also does not violate the Plan's anti-reduction provisions.

The Amendment modified the method by which Stewart's CAM Benefit would be offset by her AMPP benefit. As explained under Claim I above, the Amendment was adopted before her AMPP service was recognized in the Plan, and therefore could not have resulted in a cutback. Section 4.2.6 of the Plan was amended to include the Plan's longstanding general benefit offset provision (the "General Offset") under which Stewart's CAM Benefit (to the extent that it included AMPP service) was to be reduced by an "Offsetting Benefit". The Offsetting Benefit is computed, under the General Offset, as the benefit previously paid to Stewart in the form of a life annuity commencing at normal retirement date. The Amendment also added a new "Special Offset", which is applied instead of, and not in addition to, the General Offset, and applied only when the result is that the net benefit to Stewart would be increased by applying the Special Offset rather than the General Offset.

In Claims II and III, Stewart contends that the

Special Offset is too much of an offset - that it reduces the level of Stewart's benefit by so much that a forfeiture occurs. Stewart does not, however, contend that the General Offset is too big. Indeed, for the reasons explained below, the General Offset is entirely appropriate. Because the Special Offset applies only when it increases Stewart's benefit to more than the amount produced under the General Offset, the Special Offset cannot possibly create a forfeiture unless the General Offset is similarly flawed. Because the General Offset has no such flaw, and the Claim does not contend that it does, we do not need to determine whether the Special Offset, viewed in isolation, would be flawed in the manner contended in the Claim. It is sufficient that the General Offset is appropriate, and we find that it is for the following reasons.

In 1996 when Stewart terminated employment with Ameritech, she was given four options for her AMPP pension benefit. One of these options was to take her benefit in the form of an annuity, commencing at age 65, in the amount of $2,400.61 per month payable for life. Another option was to take a lump sum of $110,450.36. These facts are recited in the Claim, and we do not contest their accuracy. The AMPP also provided for two other options which were offered to Stewart. She could take her benefit in the form of an annuity, commencing immediately, or she could take her benefit in the form of an annuity, commencing at any time of her choosing between her termination of employment and age 65.[11]

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[11]*See*, § 4.3 of the AMPP as in effect in 1996 which provides that the early retirement date is the date of termination of

Section 7.6 of the AMPP provided that Stewart would receive, within 90 days before her distribution date, "Retirement Election Information" and further provided that she could request, "an explanation, in nontechnical language" of the terms, conditions and financial effect of payment in the various optional forms. Indeed, Stewart does not contend that she was misinformed with regarding to her options, nor does she contend that the benefits she was offered and received were miscalculated.

Given four options, including the option of having an annuity paid in the amount of $2,400.61 per month for life starting at age 65, Stewart chose the lump sum. Stewart now contends that an offset of less than $2,400.61 per month is still too much on account of her lump sum of $110,540.36. But the trade-off that Stewart was offered and accepted in 1996 was the lump sum in lieu of $2,400.61 per month, and we see no reason why that trade of which was acceptable in 1996 would be invalid today. Thus, we conclude that the General Offset, equal to $2,400.61 per month commencing at age 65, is an acceptable offset and that the Special Offset, which can only be less, should be similarly acceptable to Stewart.

Indeed, the case for the General Offset is compelling. Had Stewart not taken a lump sum, but rather left her benefit in the AMPP, she would have

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employment if it is before normal retirement date. Section 4.4 provides that normal retirement date is age 65. Section 7.3 provides that benefits may be taken either in the form of a life annuity or in the form of a lump sum. Section 7.4 confirms "the right of a Participant to elect an Annuity Starting Date at any time after his Termination Date (up to age 65)."

had $2,400.61 per month at age 65. When the AMPP was merged into the Plan, there would have been no Offset. Thus, the General Offset perfectly preserves the trade-off that Stewart made in 1996 - either $110,540.36 in a lump sum, or $2,400.61 per month, but not both.

However, our conclusion is not solely based on the propriety of offsetting $2,400.61 per month on account of a lump sum of $11 0,540.36. The crediting of AMPP service and simultaneously offsetting it by a specified amount is not constrained by any rule in ERISA that Stewart has raised. AT&T has broad discretion in establishing Plan provisions relating to the amount of benefits. AT&T was not obligated by ERISA to credit Stewart with any AMPP service, even after the merger of the plans, because Stewart had accepted the lump sum in exchange for all benefits attributable to that prior AMPP service. Having decided to provide some credit, AT&T could have credited Stewart with 50% of her AMPP service, or 10%, or 1% of her AMPP service, and she would have had no basis for complaint. If AT&T had decided to credit her with AMPP service offset purely by the General Offset, that decision would have been entirely within AT&T's prerogative as the sponsor of the Plan, and would have had a rational basis (although none is required by ERISA). In the end, AT&T decided to be more generous and reduced the General Offset in certain cases by adding the Special Offset as an alternative.

In support of her claim, Stewart offers the affidavit of David Fleiss, an actuary. Mr. Fleiss opines that the offsets set forth in the Amendment, "violate

the Plan's anti-reduction provisions and the anti-cutback rules under § 204(g) of... ERISA." This statement is supported by no analysis, reasoning or explanation. And although Mr. Fleiss lists his qualifications as an actuary, he does not represent that he has any expertise appropriate to arriving at his purely legal conclusion. Mr. Fleiss then opines that the Special Offset interest rates violate the anti-forfeiture rules of ERISA § 203(a). Again, his purely legal conclusion is supported by no analysis, reasoning or explanation. Finally, Mr. Fleiss opines that the Special Offset interest rates violate the actuarial equivalence rules under ERISA § 204(c)(3). Once again, his purely legal conclusion is supported by no analysis, reasoning or explanation. Given the complete lack of support for his conclusions, and given that he has not listed any qualifications relating to the rendering of legal opinions, Mr. Fleiss' affidavit does not change our interpretation of the applicable Plan provisions or our decision on the merits of the Claim.

We note that in addition to the Claim's request that Stewart's Special Offset be recalculated, Claim II requests production of "documents that show the earnings on the assets in the trust(s) for the AMPP from January 1996 through the present" (Att. I). However, Claim II acknowledges that the interest rates applicable to the Special Offset were established by the terms of the Plan through various amendments. (PX12, 13 and 14). These amendments specified particular interest rates. (Id.) As such, the Plan Sponsor has established such rates as terms of the Plan, and they are not subject to change or modification as a result of the "earnings on the assets in the trust(s) for the AMPP from January 1996

through the present." Indeed, such earnings are not relevant to the proper application of the Special Offset, and for the reasons explained above, they are not relevant to the legality or propriety of the Special Offset. As such, we do not believe these documents are "contract[s] or other instruments under which the Plan is established or operated," within the meaning of ERlSA § 104(b)(4); nor are they documents that are relevant to our determination of the Claim. For these reasons, your request for the production of these documents is denied.

As noted at the beginning of this letter, this response represents a formal denial of your Claim (and, solely for completeness and to avoid ambiguity, a formal denial of those claims identified in this letter as Claim I, Claim II and Claim III).

If you disagree with this decision, you may request a review of this determination within 60 days of your receipt of this letter. Any such request must be in writing and should include the reasons why you believe this decision is incorrect, as well as copies of any and all other information or documentation that supports your claim. The request for a review and all accompanying information should be sent to:

Benefits Plan Administrator
P.O. Box 770003
Cincinnati, OH 45277-1060

In accordance with Labor Regulations Section 2560.503-1 (g), we are providing you with the following information regarding the denial of your claim:

- If the Benefits Plan Administrator denies your appeal, you will have the right to file suit in federal court in accordance with ERISA Section 502(a), 29 U.S.C. 1132(a).

- You shall be provided, upon request and free of charge, reasonable access to, and copies of all documents, records and other information relevant to your claim for benefits.

  The Benefits Plan Administrator's review will take into account all documents, records and other information you submit relating to the Claim whether or not such information was submitted or considered in the Benefit Plan Administrator's initial benefit determination set forth in this letter.

If you have any questions regarding the appeals process, please call Nathan Provencher in the Fidelity Services Center at 1-866-956-3126 Extension 2466, weekdays from 8:30 a.m. to 5:00 p.m. Eastern time (7:30 a.m. to 4:00 p.m. Central time)

Sincerely,
Fidelity Investments
cc. Kathleen A. Stewart

PX26–Stewart's Administrative Appeal

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July 11, 2008

Benefits Plan Administrator
P.O. Box 77003
Cincinnati, OH 45277-1060

Re: Appeal of denial of Claims for additional benefits under the AT&T Pension Benefit Plan - NonBargained Program ("Plan")

Participant: Kathleen A. Stewart ("Stewart"); SSN 300-54-1778

Dear Benefits Plan Administrator:

On March 12, 2008, I received an unsigned letter on Fidelity Service Center letterhead, dated March 11, 2008, which, per the signature block, purports to be from Fidelity Investments. The letter (hereafter, "the Denial") denies Claims I submitted on behalf of Stewart on September 11, 2007. For the reasons set forth in the September 11, 2007 Claims letter (attached hereto), and the additional reasons set forth herein, Stewart hereby appeals the denial of her Claims.[1]

Background

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[1]Exhibits referenced in this Appeal denoted PX1, PX2 and so forth through PX54 were attached to the September 11, 2007 Claims letter. All other Exhibits referenced in this Appeal, denoted PX55, PX56 and so forth, are attached to this Appeal. If you do not have the Claims letter or any of the Exhibits proffered with it, please let me know immediately and I will forward same to you.

See 9/11/07 Claims letter, pp. 2-4.

Claim 1 - Violation of the Plan's Anti-Reduction Provisions and ERISA's Anti-Cutback Rule

A. Merits

In assessing Claim I, the AT&T Claims and Appeals Team ("Team") was required to interpret the Plan in accordance with its terms. See ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D); and Plan §3.2.1 (PX6). The starting point, therefore, is Supplement 12 to the Plan ("Supp-12") (PX11), which created the CAM Benefit.

Supp-12 states that "the accrued monthly benefit of any CAM Participant . . . shall not be less than the CAM Benefit . . .." (PX11). Supp-12 defines CAM Participant as any "Participant" who terminates employment on or after June 13, 2001 with a "nonforfeitable" (i.e., vested) benefit under the Plan [with certain exceptions not applicable to Stewart]. Supp-12 at §12.1 (PX11).

Pursuant to Rule 2.64 of the Plan's Definitions and Rules for Crediting Service ("Rules") (PX8), the term Participant includes "an Eligible Employee who has satisfied the participation requirements of the Plan and either (a) is currently employed by a Participating Company . . . or (c) was previously employed by a Participating Company and is entitled to a monthly pension benefit under the Plan in his own right" [as opposed to a derivative right, as in the case of a beneficiary]. A NonBargained Employee of a Participating Company is one such Eligible Employee.

See Rule 2.34 (defining "Eligible Employee").[2]

SBC (n/k/a AT&T) is a Participating Company, as is Ameritech. See Plan at §1.1 (PX6); and Rules at Bates 1322 (PX8). Moreover, Stewart was a NonBargained Employee of AT&T from February 1, 2001 until December 1, 2007, when she involuntarily separated from AT&T. See 10/25/07 letter from Cantarella to Fidelity (PX73). Thus, Stewart satisfies the Plan's one-year Period of Service requirement for participation. Plan at §4.1.0 (PX6). Accordingly, Stewart is a CAM Participant and entitled to the CAM Benefit. The only issue with respect to Claim I is whether her CAM Benefit must be computed without an offset, as Stewart contends.

Pursuant to Supp-12, the CAM Benefit is the "Updated Career Average Minimum Benefit calculated in accordance with Section 2 [of Supp-12]." Supp-12 at S12.1 (PX11). Section 2 of Supp-12 states that the Updated Career Average Minimum Benefit (hereafter, "CAM Benefit") at Normal Retirement Age (age 65) is 1.6% of CAM Income divided by twelve. See Supp-12 at S12.2 (PX11); and Rule 2.64 (defining Normal Retirement Age) (PX8).

Supp-12 defines CAM Income as follows:

> [(a) times (b)] plus (c) but not less than (d) where:

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[2] See Rule 2.7 (defining Bargained-for Employee as an Employee whose job title, job classification and compensation are the product of a collective bargaining agreement or union action) and Rule 2.59 (defining NonBargained Employee as an Employee who is not a Bargained Employee).

(a) Pension Compensation attributable to time periods during the CAM Averaging Period [defined as 1/1/95-12/31/99], divided by five, subject to the following provisions:

(i) Pension Compensation that is received in the first paycheck following the end of the CAM Averaging Period that is attributable to service during the CAM Averaging Period shall be included.

(ii) The Special Rules for Determining Average Annual Compensation in Section 4.2.2(b) of the Nonbargained Program shall be applied.

(b) Pension Calculation Service as of the end of the CAM Averaging Period

(c) Pension Compensation after the end of the CAM Averaging Period [i.e., after 12/31/99], but excluding any Pension Compensation included under (a)(i) above.

(d) Pension Compensation paid on or after January 1, 1995.

Supp-12 at S12.1, def. of CAM Income (emphasis added) (PX11). Thus, subject to the Special Rules in §4.2.2(b) of the Plan, **CAM Income equals [Pension Compensation for the period 1/1/95 -12/31/99 ÷ 5 (producing an annual average for this 5-year**

period) x Pension Calculation Service as of 12/31/99] + Pension Compensation after 12/31/99.

Rule 2.67 defines Pension Compensation as "the total of a Participant's Actual Base Pay" plus other specified compensation (PX8). Actual Base Pay is "a Participant's compensation that has actually been paid out by a Participating Company on such Participant's behalf that has been identified by such Participating Company as base pay." Plan §2.1 (PX6) (emphasis added). As noted, SBC (n/k/a AT&T) and Ameritech are both Participating Companies. See again Plan at §1.1 (PX6); and Rules at Bates 1322 (PX8). Therefore, Pension Compensation includes compensation paid out by SBC, AT&T, and Ameritech on Stewart's behalf.

However, only a limited portion of Stewart's Ameritech compensation is used to compute her CAM Benefit because, under the definition of CAM Income, (i) Pension Compensation for purposes of computing the CAM Benefit includes only compensation attributable on and after 1/1/95, and (ii) the Special Rules in §4.2.2(b) of the Plan fix compensation at the rate of pay immediately prior to the CAM Averaging Period for those portions of the CAM Averaging Period when the Participant was not employed by a Participating Company and, thus, did not receive Pension Compensation or Pension Calculation Service. See Supp-12 at S12.1, def. of CAM Income (PX11) (requiring application of the Special Rules in §4.2.2(b)); and Plan at §4.2.2(b) (PX6). Because Stewart was employed by IBM Global (a non-Participating Company) from July 1996 through January 2001, the Special Rules in §4.2.2(b) served to artificially freeze Stewart's compensation at her pre-

1995 rate of pay for most of the 5-year CAM Averaging Period.

As more fully explained below, SBC (n/k/a AT&T) correctly applied the Special Rules in §4.2.2(b) of the Plan when it computed Stewart's CAM Income. Perhaps not surprisingly, the Denial spends little time disputing that the limited Ameritech *compensation* should be included in Stewart's Pension Compensation. Rather, the thrust of the Denial is that Stewart's Ameritech *service* may not be included in her Pension Calculation Service and therefore an offset should be applied as a way of backing-out Stewart's Ameritech service. That position is patently wrong for myriad reasons.

First, Rule 2.66.1 defines Pension Calculation Service as an Eligible Employee's "period of employment with one or more Participating Companies" or "Interchange Companies," and excludes only service under a Prior Bargained Plan:

> 2.66.1 "Pension Calculation Service" shall mean an Eligible Employee's period of employment with one or more (a) Participating Companies, (b) Interchange Companies (if an Interchange Agreement requires the Plan to recognize the Eligible Employee's service with an Interchange Company for pension calculation purposes when he becomes an Eligible Employee), and (c) effective January 1, 1994, Bell Communication Research, Inc. during a Rotational Assignment; provided, however, Pension

> Calculation Service shall not include any period of service for pension calculation purposes while covered under a Prior Bargained Plan to the extent that the amount of the monthly pension benefit under such Prior Bargained Plan is an element in the computation of the Participant's monthly pension benefit under the Plan in accordance with the provisions of Paragraph 4.2.3 of the Plan.

Rule 2.66.1 (PX8) (emphasis added).

AT&T (f/k/a SBC) and Ameritech are both Participating Companies. Plan §1.1 (PX6); Rules at Bates 1322. Moreover, the Denial represents that Ameritech was an Interchange Company and "assumes" that an Interchange Agreement requires the Plan to recognize Stewart's Ameritech service. Denial at 6. And the AMPP was not a Prior Bargained Plan because it was not the product of collective bargaining. See Rule 2.79 (defining Prior Bargained Plan). It follows that Stewart's Pension Calculation Service includes her period of employment with Ameritech (either as a Participating Company or as an Interchange Company), as well as her period of employment with SBC (n/k/a AT&T).

Consistent with Rule 2.66.1, which excludes exclusively service under a Prior Bargained Plan, **Supp-12 expressly states that the CAM Benefit "shall be reduced for benefits payable from a Prior Bargained Plan as specified by the Nonbargained Program Section 4.2.6."** Supp-12 at S12.2 (PX11) (emphasis added). Section 4.2.6 of the

Plan states that pensions under §4.2 (entitled "Amount of Monthly Pension Benefit") shall be reduced by the pension under a Prior Bargained Plan to the extent the pension under the Prior Bargained Plan is based on service recognized as Pension Calculation Service under the Plan. Plan §4.2.6 (PX6). **Thus, pursuant to §4.2.6 of the Plan and Supp-12 (the provision that created the CAM Benefit), the CAM Benefit may be offset only by the benefit payable from a Prior Bargained Plan** (but, even then, only to the extent the Prior Bargained Plan benefit is based on service recognized under the Plan). There is no corresponding provision in the Plan or Supp-12 with respect to pensions paid or payable under a Prior Non-Bargained Plan such as the AMPP. On the contrary, §4.2.4 of the Plan explicitly states that "all" service under a Predecessor Plan must be included in Pension Calculation Service:

> 4.2.4 Coverage Under a Predecessor Plan
>
> The monthly pension benefit of a Participant who had accrued monthly pension benefits under a Predecessor Plan prior to April 1, 1981, shall be determined under the provisions of the Plan based on **all** of the Participant's service for pension eligibility and pension calculation purposes under the Plan and the Predecessor Plan; provided, however, that in no event shall his monthly pension benefit be less than his monthly pension benefit determined under the provisions of Paragraph 4.2.4 of the Plan as in effect on April 1, 1989.

(emphasis added). Predecessor Plan is defined to include the Bell System Management Plan ("BSMP") whose name subsequently changed to the Ameritech Management Pension Plan (i.e., the AMPP). Stewart participated in the BSMP and AMPP. The BSMP name change occurred sometime after the 1984 divestiture of AT&T.[3]

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[3] In 1982, AT&T Corp. settled an anti-trust lawsuit brought against it by the Department of Justice. Pursuant to the settlement agreement, effective January 1, 1984, AT&T Corp.'s 22 Bell Telephone operating companies were spun-off from AT&T and split into seven independent Regional Bell Operating Companies ("RBOCs") known as "Baby Bells." The midwest RBOC, which was assigned to American Information Technologies Corp., included Illinois Bell Telephone, Indiana Bell Telephone, Michigan Bell Telephone, Ohio Bell Telephone (where Stewart

As significantly, Rule 2.68.8 states that "all" former and current employee service that would be recognized under the AMPP (e.g., service with Ameritech) must be treated as if it had always been service with SBC:

> Effective October 8, 1999, all former and current employee service with any entity that would be recognized under the Ameritech Management Pension Plan [e.g., service with Ameritech] . . . shall be treated as if such service had always been service within the SBC Controlled Group of Corporations, subject to otherwise applicable provisions of the Nonbargained Program governing the recognition of such service.[4]

The AMPP recognized all of Stewart's 24.75 years of service with Ameritech. See AMPP Final Pension Calculation for Stewart (PX46 at Bates 3129, reflecting 24 yrs, 8 mos. and 8 days of Ameritech service). No provision of the "NonBargained Program" (i.e., Plan) excludes such service.

Furthermore, the Denial asserts that Stewart is a "Covered Employee," that Ameritech was an MPA

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was employed before and after the divestiture) and Wisconsin Bell Telephone. These RBOCS were called Ameritech for short. In 1991, American Information Technologies Corporation officially changed its name to Ameritech. See Internet information on Ameritech (PX62).

[4] SBC (now AT&T) is one of the SBC Controlled Group of Corporations. Rule 2.87 (PX8).

Interchange Company, and that the AMPP was a Former Interchange Company Pension Plan. Denial at 6-7.[5] Stewart agrees. Rule 6.1 clearly requires that service recognized under a Former MPA Interchange Company Pension Plan [here the AMPP] be included in the Covered Employee's Pension Calculation Service:

> Section 6. Mandatory Portability Agreement Provisions
>
> Notwithstanding any other provisions hereof [i.e., any other Rules], the computation of Pension Eligibility Service, Pension Calculation Service, Year of Participation Service and Years of Vesting Service of a Covered Employee shall be governed by the provisions of this Section 6.
>
> * * *
>
> 6.1.1(a) Service Under Former MPA Interchange Company Pension Plan
>
> For purposes of determining an Employee's Years of Participation Service, Years of Vesting Service, Pension Eligibility Service and Pension Calculation Service, the Plan shall allow full credit for and grant recognition of a

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[5] See Rule 2.53 (defining MPA Interchange Company) (PX8); Rule 2.41 (defining Former MPA Interchange Company) (PX8); Rule 2.42 (defining Former MPA Interchange Company Pension Plan) (PX8); and 1/1/85 Mandatory Portability Agreement ("MPA") (PX63 at Bates 4104 and 4146) (identifying the MPA Interchange Companies).

Covered Employee's Pension Service Credit and MPA Years of Service as recognized under the Former MPA Interchange Company Pension Plan in which the Covered Employee last previously was a participant.

6.1.1(b) Recognition of Service Under Former MPA Interchange Company Pension Plan

6.1.1(b)(1) The provisions of Paragraph 6.1.1(a) above shall apply . . .

6.1.1(b)(2) For purposes of determining a Covered Employee's Pension Calculation Service and Years of Vesting Service hereunder, there shall be counted only the Pension Service Credit and MPA Years of Service under and recognized by the Former MPA Interchange Company Pension Plan, as of the last date such Covered Employee was a participant in such plan, or such Pension Service Credit and MPA Years of Service which would have been recognized by such plan had the Covered Employee remained an active participant under the Former MPA Interchange Company Pension Plan during the period such Covered Employee is a Participant.

Rule 6.1 (PX8) (emphasis added). As noted, the AMPP recognized all of Stewart's 24.75 years of service with Ameritech. See again AMPP Final Pension

Calculation for Stewart (PX46 at Bates 3129).

In short, under the Plan, Supp-12 and the Rules, SBC (n/k/a AT&T) is/was required to include Stewart's service with Ameritech in her Pension Calculation Service for purposes of computing her CAM Benefit. In fact, as discussed below, SBC *did* include Stewart's service with Ameritech when it computed her estimated CAM Benefits. Indeed, SBC computed Stewart's estimated CAM Benefits in accordance with the foregoing Plan provisions and Rules **except it improperly and unlawfully offset her CAM Benefit with her AMPP benefit**.

On June 15, 2002, SBC issued two CAM estimates for Stewart, one that assumed her CAM Benefit would be paid at age 50 and one that assumed her CAM Benefit would be paid at age 55 (PX19). Consistent with the foregoing Plan provisions, Rules and Supp-12, SBC determined that Stewart's Pension Calculation Service as of the end of the 5-year CAM Averaging period (12/31/99) equaled 24.75 years, her period of employment with Ameritech (PX19 at Bates 3002 Part A, and Bates 3004 Part A, showing 24.75 years as "Pension Credited Service").[6] This determination was in accord with Rule 2.66.1 (defining Pension Calculation Service as the period of employment with one or more Participating Companies), Rule 2.68.8 (stating that all current and former service with Ameritech would be recognized),

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[6] This plainly was not service Stewart earned while employed by IBM Global, as IBM Global was not and is not a Participating Company. See again Rules (PX8 at Bates 1322). It also was not service earned through SBC (n/k/a AT&T), as Stewart did not become an employee of SBC until February 1, 2001.

§4.2.4 of the Plan (requiring "all" service under a Predecessor Plan to be included in Pension Calculation Service), Rule 6.1 (requiring service recognized under a Former MPA Interchange Company Pension Plan [here the AMPP] to be included in the Covered Employee's Pension Calculation Service), and the Supp-12 definition of CAM Income (requiring Pension Calculation Service as of the end of the 5-year Averaging Period).

Consistent with Rule 2.67 (defining Pension Compensation) and the Special Rules of §4.2.2(b) of the Plan (incorporated in the Supp-12 definition of CAM Income), in determining Stewart's Pension Compensation during the 5-year CAM Averaging Period, SBC used Stewart's rate of pay with Ameritech immediately prior to the 5-year Averaging Period (i.e., her rate of pay with Ameritech on 1/1/95) to substitute for the portion of the 5-year CAM Averaging Period during which she had no compensation from or service with Ameritech or SBC. See again PX19 at Bates 3002 Part A, and Bates 3004 Part A; 12/18/02 letter from SBC Pension and Savings Plan Service Center ("Pension Center") to Stewart (PX23) (explaining how Stewart's estimated CAM Benefits were computed); and 10/25/04 letter from the Pension Center to Stewart (PX46) (same).[7]

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[7] The Pension Center was the designated Claims Administrator for the Plan when Stewart received these explanations as to how her estimated CAM Benefits were computed and until April 1, 2006 when Fidelity became the Claims Administrator. See PX35 (showing Pension Center as Claims Administrator); PX37 (showing Pension Center as Claims Administrator); and PX69 at Bates 4383 (showing Fidelity as the new Claims Administrator as of 4/1/06).

SBC then multiplied the average of Stewart's Pension Compensation during the 5-year Averaging Period ($61,535.53) by her Pension Calculation Service as of the end of the 5-year Averaging Period (24.75 years, Stewart's period of employment with Ameritech), and then added to this product ($1,522,999.52) Stewart's total Pension Compensation (actual and assumed) after the end of the 5-year Averaging Period. See again 6/15/02 CAM estimates for Stewart (PX19 at Bates 3002 and Bates 3004). For the age-50 estimate, Stewart's Pension Compensation after the end of the 5-year Averaging Period equaled $242,216.20. Id. For the age-55 estimate, it equaled $624,716.02. Id. These calculations were consistent with the Supp-12 definition of CAM Income and produced CAM Income of $1,765,215.72 at age 50, and $2,147,716.54 at age 55. Id.

As required under the Supp-12 definition of CAM Benefit, SBC next multiplied Stewart's CAM Income by 1.6% and then divided that product by twelve to produce a monthly CAM Benefit payable at age 65, accrued as of age 50, of $2,353.62/month, and a monthly CAM Benefit payable at age 65, accrued as of age 55, of $2,863.62/month (see again PX19 at Bates 3002 and Bates 3004).[8]

Finally, under the Plan, the pension ordinarily may be reduced for commencement before normal retirement age (age 65) using specified reduction

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[8] CAM payable at age 65, accrued as of age 50: [(0.016 x $1,765,215.72 = $28,243.45) ÷ 12 = **$2,353.62**.]. CAM payable at age 65, accrued as of age 55: [(0.016 x $2,147,716.54 = $34,363.45 ÷ 12 = **$2,863.62**]

percentages (hereafter, "the Early Reduction Factor" or "ERF"). See, e.g., Plan at §4.1.2(b) (PX6). But, for long-service employees like Stewart who qualify for a Service Pension and wait until age 55 to commence receipt of their pension, there is no reduction, meaning the ERF is 1.0. Plan at §4.1.1(b) (PX6). In accordance with these provisions, SBC applied an ERF of 0.8650 to Stewart's age-50 CAM estimate, and an ERF of 1.0 to Stewart's age-55 CAM estimate, resulting in a reduced CAM Benefit payable at age 50 of $2,035.88/month,[9] and an unreduced CAM Benefit payable at age 55 of $2,863.62/month. See again 6/15/02 CAM estimates for Stewart (PX19 at Bates 3002 and Bates 3004).

All of SBC's calculations up to this point were consistent with the Plan provisions and Rules discussed supra. Subsequent CAM estimates SBC provided to Stewart reveal that SBC utilized this same methodology to determine the CAM Benefit *without offset*. See 7/09/04 CAM estimates for Stewart (PX42); and 6/14/05 CAM estimates for Stewart (PX47).[10] In fact, SBC used this same methodology to determine the CAM Benefit *without offset* of all other persons who, like Stewart, previously received their AMPP

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[9] CAM payable at age 50 after applying ERF: [$2,353.62 x 0.8650 = **$2,035.88**].

[10] The only difference was that the 6/15/02 CAM estimates for Stewart applied the ERF first, and then the offset; whereas, the latter CAM estimates for Stewart applied the offset first (albeit using one of two alternative offsets), and then the ERF. Compare PX19 with PX42 and PX47.

benefit.[11] Accordingly, Stewart has no quarrel with the methodology SBC used to estimate her CAM Benefit *without offset*. Her complaint is that SBC improperly added a step to its calculations that was nowhere authorized under the Plan. Specifically, SBC applied an offset to Stewart's estimated CAM Benefit.

Regarding the 6/15/02 CAM estimates, SBC offset Stewart's age 50 and age 55 estimated CAM Benefits by the full amount of Stewart's age-65 AMPP annuity ($2,400.61),[12] resulting in an estimated age-55 CAM Benefit after offset of $463.01/month, and an estimated age-50 CAM benefit after offset of **negative -$364.73/month!** (PX19). Aside from the nonsensical idea of providing a negative benefit, the Plan, Rules and Supp-12 nowhere provide for an offset against the CAM Benefit except as to pensions payable under a Prior Bargained Plan (discussed above).

Stewart believed that offsetting the CAM annuity payable *before* age 65 by the AMPP annuity payable *at* age 65 was actuarially unreasonable because it assumed the AMPP annuity payable *at* age 65 had already attained that value at any age before age 65. Therefore, commencing on June 24, 2002 and continuing for two years thereafter, Stewart along with six of her co-workers ("the Endorsers") embarked

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[11] See CAM estimates for Stephen Jones (PX56), Carl Seith (PX57), Linda Cobbs (PX58), Gennady Katsnelson (PX59), Maureen A. Turomsha (PX60), and Donald Paich (PX61).

[12] Although the Denial letter states that the Claims letter does not dispute any aspect of the calculation and payment of the AMPP benefit, the Claims letter does not address those issues as they are irrelevant to Stewart's Claims.

on an e-mail and letter- writing campaign to SBC officers and benefits personnel wherein they repeatedly complained that (i) the Plan contained no offset methodology for calculating the CAM, and (ii) at any rate, the offset methodology was actuarially unreasonable. See PX19 thru PX40. As a result of these communications, on April 27, 2004, SBC amended §4.2.6 of the Plan to add two alternative offsets against the CAM Benefit, making both offsets retroactively effective. See 4/27/04 Amendment (PX12).[13] SBC also simultaneously amended the AMPP to include the same offsets, establishing that the offsets were also not part of the AMPP prior to the 4/27/04 Amendment. See PX12 at Bates 1344 and 1338 through 1340.

The first offset alternative in the 4/27/04 Amendment ("the General Offset") purports to "clarify the current offset formulas" and applies to all Participants who received a prior distribution from the Plan or "other Plans of the Nonbargained Program." Id.[14] At the time of the 4/27/04 Amendment, the

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[13] SBC notified Stewart of the 4/27/04 Amendment on June 24, 2004. See 6/24/04 e-mail from Susan Sroka to Stewart and attachments thereto (PX41). However, SBC never addressed Stewart's complaint that the Plan did not provide an offset for computing the CAM Benefit [not until after Stewart complained about the offset and SBC adopted the 4/27/04 Amendment].

[14] Under the General Offset, the age-65 CAM annuity is offset by the age-65 AMPP annuity. The applicable ERF is then applied, but only if the Participant elects to receive the CAM before age 65. See June 2004 Summary of Material Modifications ("SMM") (PX16) (refers to the General Offset as the "Current Offset"). This is the same offset methodology set forth in a 10/17/03 Power Point Presentation SBC officers and benefits personnel made to Stewart

AMPP was not such "other Plan of the Nonbargained Program" because the AMPP did not merge into the Plan until 12/31/04. See Resolution approving merger of AMPP into the Plan effective 12/31/04 (PX5); and SMM, dated February 2005 (PX18). For this reason alone, the General Offset may not be utilized. **But a more fundamental reason why the General Offset (or any other offset) may not be utilized is that (i) the Plan did not previously provide for an offset against the CAM Benefit; (ii) application of the offset reduces the CAM Benefit that had already accrued as of the date of the Amendment; and (iii) this reduction violates the Plan's anti-reduction provisions and ERISA's anti-cutback rule** (discussed below).

The second alternative ("the Special Offset") applies solely to former Ameritech managers like Stewart who were outsourced to IBM Global and then later hired by SBC ("the Leapfroggers"). 4/27/04 Amendment (PX12). In a nutshell, via a complicated formula set forth in the 4/27/04 Amendment, an unlawfully high annuity value is assigned to the AMPP lump sum previously distributed, producing an unlawfully large offset (assuming an offset may be utilized).[15] Leapfroggers are entitled to the greater of the CAM Benefit with the General Offset and the CAM Benefit with the Special Offset. Id.

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and four of the Endorsers. See PX32 at Bates 3076; and see e-mails to Stewart and the Endorsers identifying the SBC officers and benefits personnel who participated in the Power Point Presentation (PX30 and PX31).

[15] The Special Offset methodology is more fully explained in Claim II.

As explained, prior to the 4/27/04 Amendment, the Plan expressly limited any offset of the CAM Benefit (or any other pension under the Plan) to benefits under a Prior Bargained Plan. See again Supp-12 at S12.2 (PX11) and Plan §4.2.6 (PX6). Therefore, as to benefits under a Prior Non-Bargained Plan (e.g., the AMPP), the 4/27/04 Amendment plainly did not "clarify" any existing offset provision. Rather, it added an offset to the formula for computing the CAM Benefit. Consequently, for Participants like Stewart who received a benefit from a Prior Non-Bargained Plan (e.g., the AMPP), the 4/27/04 Amendment reduced the CAM Benefit accrued before the Amendment. See Claim at pp. 5 and 6.[16]

Section 4.2.5 of the Plan (PX6) and Rule 3.5 (PX8) expressly state that "in no event shall the monthly pension benefit of any Participant accrued as of any time be less than his monthly pension benefit accrued as of any earlier time." Indeed, this no-reduction requirement is codified in ERISA §204(g) and Internal Revenue Code ("Code") §411(d)(6), commonly known as the "anti-cutback rules" as they prohibit plan amendments that eliminate or reduce "accrued benefits" or early retirement benefits accrued

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[16] See also 10/11/07 CAM estimates for Stewart (PX55 at Bates 4002 and 4015), which show a CAM annuity of $1,264.04 if paid at age 54.5888, and $1,231.34 if paid at age 55. But, as of 4/01/04 (three weeks before SBC adopted the 4/27/04 Amendment that added the offset provisions), Stewart had already accrued a CAM annuity without offset in the amount of $2,440/month if paid at age 65, and $2,147/month if paid on 4/01/04 when Stewart was age 50 years and 11 months. See PX41. Thus, it is indisputable that the 4/27/04 Amendment reduces the CAM Benefit already accrued before the Amendment.

before the amendment. 29 U.S.C. §1054(g); and 26 U.S.C. §411(d)(6).[17] Under ERISA and the Code, the "accrued benefit" is the annual benefit commencing at "normal retirement age," which is generally age 65. 29 U.S.C. §1002(23), (24); and 26 U.S.C. §411(a)(7), (8). Normal Retirement Age under the Plan is generally age 65. Rule 2.62.

Because application of either offset reduces the age-65 CAM Benefit and early retirement CAM Benefit accrued before the 4/27/04 Amendment, the Amendment violates the Plan's anti-reduction provisions and ERISA's anti-cutback rule. See also Report of actuary David R. Fleiss (PX53) (reaching same conclusion; citing additional authority). Stated otherwise, the 4/27/04 Amendment is illegal and unenforceable.

B. Response to Team's Reasons for Denying Claim I

The Denial states that Stewart's 6/15/02 CAM estimates were based on the "assumption" that Stewart's service with Ameritech would be used in

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[17] The Plan states that it "shall be governed by and interpreted in accordance with ERISA"; that "all benefits available under the Plan shall be provided in compliance with all legal requirements to which the Plan is subject"; and that the Plan "shall comply with all applicable requirements of federal and state law and shall be amended, if necessary, in order to satisfy any such requirements." See Plan at §§6.18, 6.20 and 9.1.4 (emphasis added) (PX6). The Plan also purports to be tax-qualified under Code §401(a), which, in turn, requires compliance with Code §411. See 26 U.S.C. §401(a)(7); Rule 2.81 (PX8); and Special Tax Notice attached to 8/22/06, 6/21/07 and 10/11/07 CAM estimates for Stewart (PX51, PX52 and PX55).

determining and calculating the amount of her CAM Benefit under the Plan. Denial at 2. As explained in Part A, this "assumption" was required under the Plan and Rules. Nonetheless, the Denial erroneously concludes that Stewart's CAM Benefit may be reduced by the amount of her AMPP benefit as a way of backing-out Ameritech service, so as to avoid "duplicative" benefits and, as asserted in the Denial, providing Stewart with a larger benefit than an Ameritech employee who never terminated employment, adding that there is "no support" for Stewart's "interpretation of the plan sponsor's intent." Denial at 2-4.

Recognition of Ameritech service is required under Rule 2.66.1 (defining Pension Calculation Service as the period of employment with one or more Participating Companies), Rule 2.68.8 (stating that all current and former service with Ameritech will be recognized), §4.2.4 of the Plan (requiring "all" service under a Predecessor Plan to be included in Pension Calculation Service), Rule 6.1 (requiring service recognized under a Former MPA Interchange Company Pension Plan [here the AMPP] to be included in the Covered Employee's Pension Calculation Service), and the Supp-12 definition of CAM Income (requiring Pension Calculation Service as of the end of the 5-year Averaging Period). Moreover, SBC utilized all of Stewart's Ameritech service when it estimated her CAM Benefits, establishing that it had the same understanding of these Plan provisions as Stewart. Therefore, the issue is not whether Stewart's Ameritech service must be included in her Pension Calculation Service for purposes of computing her CAM Benefit. The issue is whether Stewart's CAM

Benefit may be offset by her AMPP benefit. As explained, it cannot because (i) the offsets were not part of the Plan until the 4/27/04 Amendment; and (ii) application of either the General Offset or Special Offset reduces the benefit already accrued as of the 4/27/04 Amendment, violating the Plan's anti-reduction provisions and ERISA's anti-cutback rule.

Furthermore, including Stewart's Ameritech service in her Pension Calculation Service does not provide her with a larger CAM Benefit than an otherwise similarly situated Ameritech employee who never terminated for at least three reasons. First, an Ameritech employee who never terminated would have greater CAM Income for the 5-year CAM Averaging Period. Recall: The Special Rules in §4.2.2(b) of the Plan fix compensation at the rate of pay immediately prior to the CAM Averaging Period for those portions of the CAM Averaging Period when the Participant was not employed by a Participating Company and, thus, did not receive Pension Compensation or Pension Calculation Service. See Supp-12 at S12.1, def. of CAM Income (PX11) (requiring application of the Special Rules in §4.2.2(b)); and Plan at §4.2.2(b) (PX6). This applies to Stewart and all others who terminated employment with Ameritech during the CAM Averaging Period. Accordingly, for most of Stewart's CAM Averaging Period, SBC used Stewart's rate of pay immediately prior to that Period (i.e., her rate of pay on 1/1/95), rather than the rate of pay she would have received had she not been terminated from Ameritech, which would have increased over that 5-year Period. See again PX19 at Bates 3002 Part A and Bates 3004 Part A; and 12/18/02 letter from SBC to Stewart (PX23) (explaining how Stewart's estimated

CAM Benefits were computed); and 10/25/04 letter from Pension Center to Stewart (PX46) (same).

Second, CAM Income includes pay from SBC (n/k/a AT&T) or a Participating Company *after* the 5-year CAM Averaging Period (i.e. after 12/31/99). See Supp-12 at S12.1 (PX11). Stewart had no Ameritech pay after July 1996, and she had no SBC pay until February 2001, when she commenced employment with SBC. See again PX23 (showing no pay used from 12/31/99 to 2/01/01). By contrast, an Ameritech employee who never terminated would be entitled to have all Ameritech and SBC pay earned after 12/31/99 included in the CAM Income.

Third, all other things being equal, an Ameritech employee who never terminated would have greater Pension Calculation Service than Stewart whose service with Ameritech ceased when she was terminated. In short, the Denial erroneously contends that Stewart's CAM Benefit must be reduced by the amount of her AMPP benefit to avoid providing her with a larger benefit than an Ameritech employee who never terminated. As just explained, Stewart's CAM Benefit is smaller than that of an otherwise similarly situated Ameritech employee who never terminated.[18]

Of course, whether Stewart's CAM Benefit would be greater than that of an Ameritech employee who never terminated is irrelevant, as ERISA requires

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[18] There is nothing unfair or unusual about granting service earned with a former or predecessor employer to attract management level employees like Stewart to a company. (Recall: AMPP stands for Ameritech Management Pension Plan).

that every employee benefit plan be established pursuant to a written instrument, and that the plan be administered in accordance with its written terms. 29 U.S.C. §1102(a); 29 U.S.C. §1104(a)(1)(D). Accordingly, ERISA does not permit benefits to be paid based on the plan's sponsor's purported unwritten intent. Under the Plan and Rules as they existed before the 4/27/04 Amendment, Stewart's Ameritech service must be included in her Pension Calculation Service when computing her CAM Benefit.

As further explained, except for benefits under a Prior Bargained Plan, the Plan did not provide for an offset against the CAM Benefit until after Stewart complained that SBC was improperly utilizing an offset and SBC adopted the 4/27/04 Amendment. Thus, Stewart's claim that her CAM Benefit may not be offset by her AMPP benefit (or a value assigned to that benefit) is based on the unambiguous pre-Amendment Plan provisions. The Denial, on the other hand, is based on the 4/27/04 Amendment, which is illegal because it causes an impermissible reduction in the benefit already accrued. Worse, the Denial (i) directly conflicts with the pre-Amendment Plan provisions--in particular, Rules 2.66.1, 2.68.8 and 6.1; Plan §4.2.4; and Supp-12 -all requiring that Stewart's Ameritech service be included in her Pension Calculation Service; and (ii) adds non-existent terms to the pre-Amendment Plan provisions (i.e., that the General Offset or Special Offset may be utilized in determining the final CAM Benefit). As such, the Team's interpretation of the Plan and Denial are patently unreasonable.

As further grounds for denying Claim I, the

Denial asserts, in conclusory fashion, that any additional benefit obligation resulting from the merger of the AMPP into the Plan was satisfied by the prior payment of Stewart's AMPP lump sum. Denial p. 4. Stewart's Claim is based on the unambiguous provisions of the Plan, not on any strawman argument that additional benefits are owed on account of the merger.

The Denial also contends that Pension Compensation for purposes of calculating Stewart's CAM Income and CAM Benefit does not include compensation Stewart earned while at Ameritech, reasoning that (i) Stewart did not become a Participant in the Plan until 2001, and (ii) she was not a Participant in the Plan when she was employed by Ameritech. Denial at 5-6. To the extent the Denial suggests that Stewart seeks to have her CAM Income computed using all of her compensation from Ameritech, the suggestion is erroneous. Stewart seeks to have her CAM Income computed using only the limited amount of Ameritech compensation required under the Supp-12 definition of CAM Income (discussed in Part A).

As an additional basis for denying Claim I, the Denial asserts that (i) Ameritech was an MPA Interchange Company because it was a party to the Mandatory Portability Agreement ("MPA") [explained below]; (ii) an Interchange Agreement requires the Plan to recognize Stewart's service with Ameritech; (iii) Stewart is a Covered Employee as that term is defined in Rule 2.19; and (iv) Rule 2.66.5 precludes recognition of service earned by a Covered Employee at an MPA Interchange Company that would otherwise

be recognized by the Plan if the Covered Employee (a) received a lump sum from the MPA Interchange Company's Pension Plan [i.e., the AMPP], and (b) did not repay the lump sum. Denial at 6-7. Stewart stipulates that Ameritech was an MPA Interchange Company and that she is a Covered Employee under Rule 2.19 (PX8). However, this argument does not pass muster because it violates §559 of the Tax Reform Act of 1984 ("TRA").

Section 559 extended indefinitely the provisions of a November, 1, 1983 Divestiture Interchange Agreement ("DIA") entered into by AT&T and the entities that were spun off from AT&T as part of the settlement of a Department of Justice anti-trust lawsuit. See DIA (PX64); See TRA §559 (PX65) and Internet Info re AT&T divestiture, Regional Bells, and Ameritech (PX62). Ameritech and Southwestern Bell Telephone (later known as SBC) were among those spun-off entities and, as signatories to the DIA, were Interchange Companies. See DIA (PX64 at Bates 4157 and 4260).

Under the DIA, if a "covered employee" experienced a change of employment from one Interchange Company to another Interchange Company during the 1984 calendar year, the pension plan of the new Interchange Company (referred to as the "Transferee Interchange Company Pension Plan") was required to recognize any service recognized by the pension plan of the former Interchange Company (referred to as the "Transferor Interchange Company Pension Plan"). DIA (PX64 at Bates 4161, 4162, 4165, 4169, 4171, 4172, 4177, 4178, 4180-4182). The DIA did not require the Transferee Interchange Company

Pension Plan to assume any pension benefit obligation previously paid by the Transferor Interchange Company Pension Plan; it required the Transferee Interchange Company Pension Plan to recognize any service recognized by the Transferor Interchange Company Pension. Id. Most importantly, the DIA did not contain any offset provisions, or condition the mandated recognition of service by the Transferor Interchange Company Pension Plan on the repayment of any lump sum or pension previously paid by the Transferee Interchange Company Pension Plan.

Section 559 of the TRA extends indefinitely the provisions of the DIA with respect to any change of employment from one Interchange Company to another Interchange Company on or after January 1, 1985 by a "covered employee":

> Notwithstanding any provisions of the divestiture interchange agreement to the contrary, in the case of any change in employment on or after January 1, 1985, by a covered employee, the recognition of service credit, and enforcement of such recognition, shall be governed in the same manner and to same extent as provided under the divestiture interchange agreement for a change in employment by a covered employee during calendar year 1984.

See §559(a)-(c) (PX65) (also defining "covered employee" and "change of employment"). Section 559 adds that "Nothing in this section [559] shall be construed to limit benefits which would otherwise be

available to any individual, whether provided under the modified final judgment, under applicable law, or otherwise." See §559(d) (PX65). Rule 2.58 states that the intent of the MPA is to comply with §559 of the TRA.

Because §559 extends indefinitely the DIA's requirement that service recognized by the Transferor Interchange Company Pension Plan [here, the AMPP] be recognized by the Transferee Company Pension Plan [here, the Plan], and the DIA did not condition this recognition of service on repayment of any lump sum or pension previously paid, any provision of the Plan expressly or impliedly requiring repayment of the AMPP lump sum as a condition for recognition of Ameritech service under the Plan violates §559 and, as such, is void.

Rule 2.66.5 is also void for the additional reason that repayment of the AMPP lump sum was impossible, as established by (i) two provisions in the summary plan description ("SPD") for the AMPP, (ii) a June 2004 SMM for the Plan, and (iii) a 10/17/03 Power Point Presentation by SBC benefits personnel, all making clear that repayment of the AMPP lump sum was not allowed. The first AMPP SPD provision ("Provision 1") pertains exclusively to persons who are "Reemployed Within The Ameritech Region," and explains that a person re-employed by "the Company" (Ameritech) cannot restore their original benefit by repaying the lump sum previously received. Stewart was re-employed in Ohio which is within the five-state Ameritech Region (Michigan, Ohio, Indiana, Illinois, and Wisconsin). Moreover, Stewart was re-employed by SBC, not Ameritech. Clearly, under Provision 1,

Stewart could not repay her AMPP lump sum.

The second provision in the AMPP SPD ("Provision 2") applies solely to persons who are "Reemployed Outside The Ameritech Region," explaining that re-hired employees must repay their prior lump sum within one year of re-employment with an Interchange Company in order for service with the prior Interchange Company to be recognized. See PX2 at Bates 1065 (emphasis added). Stewart was re-employed within the Ameritech Region, specifically, Ohio where she has worked throughout her tenure with Ameritech and SBC (now AT&T). Thus, under Provision 2, Stewart could not replay her AMPP lump sum.

Significantly, the June 2004 SMM for the Plan explicitly states that repayment of the AMPP lump sum was not allowed:

> This Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP and approximates the asset recapture by the pension trust had lump sum repayments been allowed.

June 2004 SMM (PX16 at Bates 1365) (emphasis added). Indeed, the 10/17/03 Power Point Presentation (prepared and presented by SBC Benefits personnel as "Benefits Response" to Stewart's and the other Endorsers's complaints about the offset) explains that repayment of the AMPP lump sum was not allowed because it would cause the Plan to fail the IRS rules

that prohibit discriminating in favor of Highly Compensated Employees:

> The Company also considered amending the pension plan to allow rehires to repay their prior lump sum distributions plus investment earnings*, thereby avoiding the need for a CAM offset calculation.
>
> While conceptually sound, this approach ran afoul of IRS non-discrimination testing. To pass successfully, a repayment alternative could only be offered to the non-Highly Compensated Employees ("HCE"), that is, those whose 2003 pay is less than $90,000. The remaining 59 HCE's would not have a repayment opportunity. For purposes of equity, this alterative was also deemed inappropriate.
>
> * Equal to pension trust's actual earnings performance, e.g., +45% thru Jan. 1, 2003.

See PX32 at Bates 3073 and 3081. In summary, Rule 2.66.5 is void because (i) it violates §559 of the TRA, and (ii) repayment of the AMPP lump sum was not only not allowed, it would cause the Plan to violate IRS non-discrimination rules, both making repayment impossible.

Rule 6.1.4(c), on which the Denial further relies, is void for these same reasons. Rule 6.1.4(c) (PX8) states that "benefit accrual service" at a former MPA Interchange Company (other than an SBC MPA Interchange Company) shall not be recognized under the Plan unless the Covered Employee repays the lump sum to the MPA Interchange Company Pension Plan [here, the AMPP] in accordance with the terms and conditions and within the time period provided in such plan . . .." Rule 6.1.4(c) violates §559 of the TRA because §559 requires service with the former MPA Interchange Company to be recognized by the Plan. Moreover, pursuant to the AMPP SPD, the June 2004 SMM for the Plan, and the 10/17/03 Power Point Presentation, Stewart was not only not allowed to repay her AMPP lump sum, repayment would cause the Plan to violate the IRS's non-discrimination rules.

As further grounds for denying Claim I, the Denial contends that "Rule 3.3 explicitly prevents double counting of Pension Calculation Service with respect to a 'Former Affiliate Plan,'" and that Ameritech is a Former Affiliate Plan. Denial at 7. This rationale ignores the proviso in Rule 3.3 which reads as follows:

> Notwithstanding any other provision of Section 3 or 4, but subject to the provisions of any applicable Interchange Agreement in accordance with Section 5, an Employee's Pension Eligibility Service and Pension Calculation Service, or Pension Eligibility Service only, as applicable, shall not include any service which is recognized for purposes of determining pension eligibility or amount under a Former Affiliate Plan . .

Rule 3.3 (PX8). The Denial represents that Ameritech was an Interchange Company and that an Interchange Agreement requires the Plan to recognize Stewart's service. Denial at 6. In light of these representations, the proviso (highlighted above) in Rule 3.3 applies, and Stewart's service with Ameritech must be recognized by the Plan.

This conclusion is further compelled by Rule 2.45.1 (PX8) which defines "Interchange Agreement" as follows:

> [A]n agreement among one or more Participating Companies and one or more Associated or Allied Companies or Former Affiliates, which provides for the portability of benefits and mutual recognition of term of employment with respect to certain employees (a) who are employed by a Participating Company and were previously employed by an Associated or Allied Company or Former Affiliate, or (b) who are employed by an Associated or Allied Company or a Former Affiliate and were previously employed by a Participating Company.

SBC (n/k/a AT&T) and Ameritech are both Participating Companies. See Plan at §1.1 (PX6); and Rules at Bates 1322 (PX8). Ameritech is also a Former Affiliate. See Rule 2.39 (PX8). Moreover, the MPA provides for the mutual recognition of term of employment with respect to a "covered employee" who is employed by an Interchange Company (e.g., Ameritech) and subsequently re-employed by another Interchange Company (e.g., SBC, n/k/a AT&T). See MPA (PX63) at Bates 4104 ("The MPA provides for the mutual recognition of term of employment (i.e., 'net credited service' (NCS) . . . for a covered employee . . . hired or recalled by an Interchange Company on or after January 1, 1985."); and MPA (PX63) at Bates 4106-4107 (defining Interchange Company and "covered employee." Consequently, the MPA is an Interchange Agreement. Rule 2.45.1 (PX8).

Consistent with the DIA and §559 of the TRA which indefinitely extended the provisions of the DIA, the MPA (i) requires the "hiring company" pension plan to recognize service recognized by the "former company" pension plan, and (ii) does not contain any offset provision or condition such recognition of service on repayment of any lump sum or pension previously paid by the "former company" pension plan. See MPA (PX63) at Bates 4107 (defining hiring company and former company, both of which must be an Interchange Company), and MPA (PX63) at Bates 4110, §§3.1 and 3.12 (requiring service at the former Interchange Company to be credited upon determining that the re-hired employee is a covered employee). Because Rule 3.3 is expressly "subject to the provisions of any applicable Interchange Agreement," and the MPA is an Interchange Agreement that mandates recognition of Stewart's service with Ameritech, Rule 3.3 requires the Plan to recognize Stewart's Ameritech service (not the opposite, as the Denial contends).

The Denial further asserts that (i) Stewart's service and compensation with Ameritech became service and compensation under the Plan when the AMPP merged into the Plan [12/31/04; see PX5], Denial at 8, and (ii) "when the AMPP was merged with the Plan . . . Stewart's CAM Benefit properly included her Ameritech compensation and service for the first time." Denial at 9 (emphasis added). These assertions are patently erroneous. As explained, under the MPA and §559 of the TRA, Stewart's Ameritech service became service under the Plan when SBC hired Stewart on 2/1/01. This was also required under the definition of CAM Income, which, in addition, utilizes only a limited portion of Stewart's Ameritech

compensation to compute her CAM Benefit. See Supp-12 at S12.1 (PX11). Significantly, Stewart's 6/15/02, 6/24/04 and 7/09/04 CAM estimates all reveal that, as required under Supp-12 which created the CAM Benefit, SBC utilized all of Stewart's 24.75 years of Ameritech service (and a limited portion of her Ameritech compensation) to determine her CAM Benefit. See PX19, PX41 and PX42. These estimates were all issued **before** the 12/31/04 merger. See PX5. Thus, the merger has/had nothing to do with whether SBC and the Plan did or must recognize Stewart's Ameritech service. They did and they must.

The Denial nonetheless asserts that the CAM estimates were "based on the assumption that the AMPP would eventually be merged with the Plan, resulting in Stewart's Ameritech service and compensation being used to calculate her CAM Benefit, and her AMPP benefit being taken into account as partial payment of the resulting CAM Benefit obligations." Denial at 9. If an "eventual merger" or prior payment from the AMPP were a factor or component of the CAM calculation, the Plan was required to expressly state this. It did not. It is elementary that ERISA-governed pension plans must be administered in accordance with their written terms (to the extent consistent with ERISA)--not the plan sponsor's putative unexpressed intent. 29 U.S.C. §1104(a)(1)(D).

Although the Denial claims that other provisions besides §4.2.6 of the Plan provide for an offset [the offset in §4.2.6 applies solely to a benefit paid or payable under a prior Bargained Plan], the Denial cites no such other Plan provision, much less

one that authorizes an offset against the CAM Benefit. The Denial also asserts that it was only necessary to include offset language in §4.2.6 because a Bargained Plan could not be merged into the Plan, which is a Non-Bargained Plan. Denial at 8. If it was only necessary to include offset language as to a benefit paid or payable under a Prior Bargained Plan, the Plan would not have needed to add offset language as to a benefit paid or payable under a Prior NonBargained Plan (e.g., the AMPP), as it did when it adopted the 4/27/04 Amendment (PX12). It follows that the 4/27/04 Amendment did not "clarify" any pre-existing offset provisions, as the Denial erroneously contends; rather, it added an offset to the CAM Benefit.

The Denial adds that the 4/27/04 Amendment contemplates application of an offset where a Participant has (i) earned service under, and received a benefit from, the Plan or another plan, and (ii) the benefit under the Plan is calculated including such service. Denial at 9. But, prior to the 4/27/04 Amendment, the Plan contemplated an offset only where the Participant earned service, and was entitled to a monthly pension benefit, under a Prior Bargained Plan. See again Plan §4.2.6 (PX6) and Supp-12 at S12.2 (PX11). Therefore, the 4/27/04 Amendment unlawfully reduced the CAM Benefit already accrued before 4/27/04.

Lastly, the Denial states that the CAM estimates do not indicate that Stewart "would receive a double benefit based on double compensation or service credit without the appropriate recognition of her prior AMPP benefit." Denial at 9-10. Stewart does

not seek a double benefit, double compensation, or double service. She seeks only the CAM Benefit to which she is entitled under Plan provisions and Rules as they existed before the 4/27/04 Amendment. As explained, under the MPA and §559 of the TRA, the Plan was required to recognize Stewart's Ameritech service; and this was also required under the Supp-12 definition of CAM Income, which utilizes only a limited amount of Stewart's Ameritech service to compute her CAM Benefit. See again Supp-12 at S12.1 (PX11). Thus, Stewart seeks only the CAM Benefit to which she is legally entitled.

C. Relief Requested for Claim I

For the foregoing reasons, Stewart requests that her CAM Benefit be computed without any offset, General or Special. If the Benefits Plan Administrator grants this request and the Plan or Plan fiduciaries do not object, the Benefits Plan Administrator need not address Claim II or Claim III.

Claim II - Violation of ERISA's Anti-Forfeiture Rules With Respect to the Special Offset

A. Merits

The Plan states that it "shall be governed by and interpreted in accordance with ERISA"; that "all benefits available under the Plan shall be provided in compliance with all legal requirements to which the Plan is subject"; and that the Plan "shall comply with all applicable requirements of federal and state law and shall be amended, if necessary, in order to satisfy any such requirements." Plan §6.18, §6.20 and §9.1.4

(PX6). The Plan also purports to be tax-qualified under Code §401(a), which, among other things, requires compliance with Code §411. See 26 U.S.C. §401(a)(7); Rule 2.81 (PX8); and Special Tax Notice attached to 8/22/06, 6/21/07 and 10/11/07 CAM estimates for Stewart (PX51, PX52 and PX55).

Pursuant to ERISA §203(a) and Code §411(a), commonly known as the anti-forfeiture rules, vested accrued benefits are "nonforfeitable." 29 U.S.C. §1053(a); and 26 U.S.C. §411(a). Treasury Regulation ("TR") 1.411(a)-4, which enforces ERISA §203(a) and Code §411(a), explains that adjustments to plan benefits in excess of reasonable actuarial reductions can result in accrued benefits being impermissibly forfeited. 26 C.F.R. §1.411(a)-4.

The 4/27/04 Amendment provides a General Offset against the CAM Benefit and, for Participants like Stewart who were outsourced to IBM Global and then later in-sourced back to SBC (i.e., the Leapfroggers), an alternative Special Offset against the CAM Benefit (see PX12). Leapfroggers are entitled to the greater of the CAM Benefit under the General Offset and the CAM Benefit under the Special Offset. Id.

Under the 4/27/04 Amendment, the Special Offset is computed as follows: (i) calculate the age-65 CAM annuity without offset, (ii) if the Participant elects to receive the CAM benefit before age 65, apply the applicable ERF, and (iii) then offset the resultant CAM annuity by a projected annuity value of the AMPP lump sum previously distributed ("the Special Offset Annuity"). See 4/27/04 Amendment (PX12).

The Special Offset Annuity is determined by (i) accumulating interest on the AMPP lump sum distributed from the date it was paid to the date of commencement of the CAM Benefit using a Special Offset Interest Adjustment Rate ("SOIA Rate"), and then (ii) converting this projected AMPP lump sum into an annuity using the Plan's actuarial assumptions (interest rate and mortality table) for converting a lump sum into an annuity. Id.

The SOIA Rate is (i) for the projection period through December 31, 2003, set forth in Tables and varies depending on when the Leapfrogger received his/her AMPP lump sum, and (ii) for the projection period after December 31, 2003, 8.5% per annum regardless of when the Leapfrogger received his/her AMPP lump sum or when the Leapfrogger will receive his/her CAM Benefit. See 4/27/04 Amendment (PX12). The Table for AMPP lump sums paid in 1996 and 1997 is in the 4/27/04 Amendment (PX12). The Tables for AMPP lump sums paid after 1997 are in two subsequent Plan Amendments, dated 6/22/04 (PX13) and 8/16/04 (PX14).

The Table below collects all SOIA Rates from the three Amendments for the projection period through December 31, 2003:

Month/Year of prior AMPP lump sum	SOIA Rate
January 1996	95.7061%
June 1996	87.5606%
July 1996	94.7833%
August 1996	91.0774%
September 1996	82.9980%
October 1996	80.6276%
November 1996	72.3740%
December 1996	73.8816%
January 1997	69.4927%
February 1997	69.9151%
March 1997	74.4663%
April 1997	69.6354%
June 1997	55.7122%
July 1997	46.9578%
November 2000	5.9304%
December 2000	2.7586%
January 2001	0.3052%
February 2001	6.2838%
March 2001	11.5957%

As will now be explained, the SOIA Rates are unreasonably high. Consequently, use of the SOIA Rates results in an impermissible partial forfeiture of the CAM Benefit.

Stewart received her AMPP lump sum--a single sum equal to her Defined Lump Sum ("DLS") under the AMPP ($110,450.36)[19]–on or about August 2, 1996 (See PX3). Therefore, Stewart's SOIA Rate is (i) 91.0774% from 8/1/96 to 12/31/03, and (ii) 8.5% per annum thereafter until Stewart commences receipt of her CAM Benefit.

The higher the SOIA Rate, the larger the projected AMPP lump sum and resultant Special Offset Annuity and, thus, the larger the Special Offset. Stated otherwise, the higher the SOIA Rate, the smaller the net CAM Benefit after application of the Special Offset.

The June 2004 SMM for the Plan explains that the "Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP." See June 2004 SMM (PX16). This statement was reiterated in a 6/24/04 Leapfrog (7) Discussion

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[19] The DLS is a single sum, computed as the product of the Participant's final average compensation times a specified percentage, which increases as the Participant ages and accumulates service under the AMPP. AMPP §5.1(a) (PX1). The Accrued Benefit at and after termination of employment is an annuity commencing at normal retirement age (age 65), determined by dividing the DLS by a factor based on the Plan Mortality Table and interests rates set by the Pension Benefit Guaranty Corporation ("PBGC"). AMPP §5.1(b) (PX1).

Summary of the Special Offset, which SBC e-mailed to Stewart, the Endorsers and various SBC Benefits personnel and officers who had considered Stewart's and the Endorsers' complaints about the offset. See PX41; and PX31, PX32 and PX34 (providing titles of the SBC benefits personnel and officers).

According to the 10/17/03 Power Point Presentation, prepared and presented as "Benefits Response" to Stewart's and the Endorsers's complaints about the offset, the "pension trust's actual earnings performance" from the time the AMPP lump sum was paid through January 1, 2003 equaled "+45%" (PX32, Bates 3076). But, for the projection period through 12/31/03, the SOIA Rates specified in the Plan Amendments ranged between 95.7061% and 55.7122% for Participants who received their AMPP lump sum in 1996 or the first half of 1997. See again Table above. These SOIA Rates are patently unreasonable for at least three reasons.

First, the SOIA Rate listed in the Amendments exceeds the rate Ameritech utilized to derive an actuarially equivalent age-65 AMPP annuity from the DLS and, thus, violates the actuarial equivalence rules under ERISA §204(c)(3) and Code §411(c)(3). For Stewart, the listed SOIA Rate is (i) 91.0774% for the period 8/1/96 (the date Stewart received her AMPP lump sum) through 12/31/03 (7.42 years), which equates to an average annual rate of 9.1229% for that period, and (ii) a fixed 8.5% rate for the period thereafter. See 4/27/04 Amendment (PX12). However, according to the AMPP Final Benefit Statement for Stewart (PX3), Ameritech used a PBGC rate of 4.5% to derive Stewart's actuarially-equivalent age-65 AMPP

annuity from the DLS. More specifically, Ameritech used the PBGC "immediate" rate of 4.5% for the period at and after normal retirement age and the PBGC "deferred rates" of 4% for the deferral period before normal retirement age, making the overall rate used to derive Stewart's age-65 AMPP annuity 4.137%. See Supplemental Information from actuary David R. Fleiss (PX54). Thus, the listed SOIA Rate exceeds the rate Ameritech utilized to derive Stewart's actuarially equivalent age-65 AMPP annuity from the DLS by (i) nearly 5% for the period 8/1/96 to 12/31/03, and (ii) over 4% for the period thereafter.[20] Use of the higher rate results in a larger Special Offset Annuity and, thus, a smaller net CAM Benefit.

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[20] On August 27, 2004 and September 9, 2004, Stewart sent letters to the Pension Service Center, requesting information about the SOIA Rates. See PX43, PX44 and PX45. In one letter, Stewart advised that, via the 10/17/03 Power Point Presentation (PX32, Bates 3081), the Endorsers were informed that the Plan's earnings were approximately 45% from July 1996 through January 2003, but that at a June 25, 2004 meeting, they were informed that the Plan's earnings for that period were 94.78%--more than double the earnings represented just eight months earlier. See PX44. Stewart requested that the Pension Service Center provide her with the Plan's actual earnings for each year from 1996 through 2003. Id. The Pension Service Center failed to provide this information, responding only that the 45% earnings represented in the Power Point Presentation was an estimate by "the actuaries" and that "SBC Treasury" had later provided actual month-by-month earnings that were "more accurate." See PX46. On March 17, 2006, Stewart renewed her request for actual year-by-year pension trust earnings and, in addition, requested the documents SBC had relied upon to determine the SOIA Rates. See PX48. SBC responded on May 16, 2006, advising that the documents would not be produced. See PX49.

Second, these SOIA Rates significantly exceed the Plan's "actual" +45% earnings from the time the AMPP lump sum was paid through January 1, 2003. See again 10/17/03 Power Point Presentation (PX32, Bates 3076). In fact, for the projection period through 12/31/03, the SOIA Rates for Participants who received their AMPP lump sum in January 1996, July 1996, or August 1996 [Stewart] are more than double the Plan's +45% "actual" earnings through January 1, 2003, making those SOIA Rates extremely unreasonably high. Compare Table above and PX12, PX13 and PX14 with 10/17/03 Power Point Presentation(PX32, Bates 3076).[21]

Third, the Plan's earnings for certain periods could not possibly have differed by the percentages suggested by the SOIA Rates listed in the Amendments. For example, for the projection period through 12/31/03, the SOIA Rate for Participants who received their AMPP lump sum in July 1996 is 94.7833%, but only 72.3740% for Participants who received their AMPP lump sum just a few months later in November 1996. See again Table above. Since the SOIA Rates are supposed to equal the rate of return on plan assets from the time the AMPP lump sum was paid (see again June 2004 SMM, PX16), this would suggest a rate of return on plan assets of 13.0004% for

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[21] SBC exacerbated this problem by using for Stewart the July 1996 SOIA rate of 94.7833% for the period before January 1, 2004, rather than the August 1996 SOIA Rate of 91.0774% specified in the 4/27/04 Amendment for Leapfroggers who received their AMPP lump sum in August 1996. See 6/24/04 CAM estimates for Stewart (PX41, Bates 3112 n.1). In fact, it appears that SBC used the August SOIA Rate only for Stewart's 6/14/05 CAM estimates (PX47).

the July 1996 to November 1996 period. See Supplemental Information from Actuary David R. Fleiss (PX54). A 13.0004% rate of return for this four-month period is implausible because, during this same period, the Standard & Poor 500 ("S&P 500") produced a return of only 5.1642%. Id.

In sum, the SOIA Rates are unreasonable because (i) they exceed the rate Ameritech utilized to derive an actuarially-equivalent age-65 annuity from the DLS; (i) they exceed the Plan's actual +45% earnings from the time the AMPP lump sum was paid through 1/1/03; and (iii) the difference in SOIA Rates from month to month is implausible (for the reasons discussed). See also Report of Actuary David R. Fleiss (PX53) (concluding that the SOIA Rates violate the anti-forfeiture rules under ERISA §203(a) and Code §411(a) and enforcing Treasury Regulation 1.411(a)-4).

B. Response to Team's Reasons for Denying Claim II (see Part B following Claim III)

The Denial treats Claim II and Claim III together. See Denial at 10. Therefore, Stewart will address the merits of Claim III first and then respond to the Team's reasons for denying Claims II and III.

Claim III - Violation of ERISA's Actuarial-Equivalence Rule With Respect to the Special Offset

A. Merits

Pursuant to ERISA §204(c)(3) and Code §411(c)(3), commonly known as the actuarial equivalence rules, "in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age . . . the employee's accrued benefit . . . shall be the actuarial equivalent of such benefit or amount." 29 U.S.C. §1054(c)(3) (emphasis added); and 26 U.S.C. §411(c)(3) (emphasis added). These actuarial equivalence rules dictate that the *same* interest rate and mortality table Ameritech used to derive Stewart's actuarially equivalent age-65 AMPP annuity from the DLS be used to derive an actuarially equivalent AMPP annuity for any other age. See 26 C.F.R. §1.401(a)(4)-12 (defining actuarial equivalent); Actuarial Standard of Practice No. 4 (defining actuarial equivalent) (part of PX53); and Employee Benefit Plans: A Glossary of Terms 3 (9th ed. 1997) (defining actuarial equivalent) (part of PX53).

Under the AMPP, the actuarial assumptions for deriving an actuarially equivalent age-65 annuity from the DLS were (i) the rates that would be used by the PBGC to value lump sum benefits, as effective on the first day of the Plan Year of termination (i.e., on January 1), and (ii) the Plan Mortality Table (an adjusted UP 1984 Mortality Table). AMPP §5.1(b) (PX1).

Stewart received her AMPP lump sum in 1996. Therefore, her age-65 AMPP annuity was derived from the DLS using the PBGC rates for January 1, 1996, which were the PBGC "immediate" rate of 4.5% for the period at and after age 65, and the PBGC "deferred" rates of 4.0% for the period before age 65. See also AMPP §5.1(b) (PX1) (describing the PBGC immediate and deferred rates); AMPP Final Benefit Statement for Stewart (PX3) (noting use of 4.5% PBGC rate); and Supplemental Information from actuary David R. Fleiss, clarifying the PBGC rates utilized to derive Stewart's age-65 AMPP annuity (PX54). As explained in Claim II, the SOIA Rate exceeds these PBGC interest rates. Therefore, the projected AMPP lump sum and resultant Special Offset Annuity will exceed the annuity that is the actuarial-equivalent of Stewart's age-65 AMPP annuity, thereby violating ERISA §204(c)(3)'s actuarial equivalence rule.

This actuarial equivalence violation will be exacerbated if the rate used to convert the projected AMPP lump sum into the Special Offset Annuity exceeds the rate Ameritech utilized to derive Stewart's actuarially equivalent age-65 annuity from the DLS. According to the 4/27/04 Amendment, the interest rate for converting the projected AMPP lump sum into the Special Offset Annuity is the "GATT Basis" interest rate as of the date the Participant terminates employment, which the Plan defines as the 30-year Treasury rate during the middle month of the previous calendar quarter. Plan §2.1 (PX6). Because the GATT Basis rate changes every three months, it could exceed the rate Ameritech utilized to derive Stewart's actuarially equivalent age-65 AMPP annuity from the DLS, in which case the GATT Basis rate could not be

utilized without further violating ERISA's actuarial equivalence rule.

The actuarial equivalence violations inherent in the Special Offset assumptions are illustrated by Stewart's 6/14/05 CAM estimate, which shows a Special Offset Annuity of **$3,900.40**/month at age 63. See PX47. That is **$1,500/month** more than Stewart's AMPP annuity at age 65 ($2,400.61/month) (see PX 3)! While common sense and logic alone dictate that an actuarially-equivalent AMPP annuity at any age before age 65 will be less than (not more than) Stewart's age-65 AMPP annuity, this conclusion is confirmed by the AMPP Final Benefit Statement for Stewart, which shows that Stewart's AMPP annuity at age 43 would equal $545.87; i.e., it would be less than her age-65 AMPP annuity. See PX3. See also PX46, Bates 3129 (same).

In sum, the SOIA Rate for projecting the AMPP lump sum to the benefit commencement date and the interest rate utilized to convert the projected AMPP lump sum into an annuity, results in a Special Offset Annuity that exceeds the actuarial equivalent of Stewart's age-65 AMPP annuity, thereby violating the actuarial equivalence rules under ERISA §204(c)(3) and Code §411(c)(3). The only actuarial assumptions under the Special Offset methodology that will not cause the Plan to violate the actuarial equivalence rule under ERISA §204(c)(3) are the interest rates and mortality table Ameritech utilized to derive the actuarially equivalent age-65 AMPP annuity from the DLS.

B. Response to Team's Reasons for Denying Claims II and III

In response to Claims II and III, the Denial initially asserts that the 4/27/04 Amendment "was adopted before [Stewart's] AMPP service was recognized by the Plan." Denial at 10. As explained in the Claim I discussion above, the Plan recognized all of Stewart's Ameritech service--both before and after the 4/27/04 Amendment. See 6/15/02, 6/24/04, 7/09/04, 6/14/05, 7/27/06, 8/22/06, 6/21/07 and 10/11/07 CAM estimate for Stewart (PX19, PX41, PX42, PX47, PX50, PX51, PX52, PX55). Thus, the 4/27/04 Amendment had nothing to do with whether the Plan recognized Stewart's Ameritech service for purposes of computing her CAM Benefit.

The Denial next asserts that the 4/27/04 Amendment amended §4.2.6 of the Plan to include the Plan's "longstanding general benefit offset provision (the 'General Offset')." Denial at 10. But prior to the 4/27/04 Amendment, the Plan authorized an offset as to the pension under a Prior Bargained Plan, only. See again Plan §4.2.6 (PX6) and Supp-12 at S12.2 (PX11). Thus, there was no "longstanding" General Offset.

The sole rationale given for denying Claims II and III is that (i) Stewart asserted that the Special Offset is too large, thereby causing an impermissible partial forfeiture of the CAM Benefit; (ii) Stewart did not assert this argument as to the General Offset; (iii) the Special Offset applies only when it produces a larger net CAM Benefit than under the General Offset; and (iv) therefore, the Special Offset cannot create a forfeiture unless the General Offset is similarly

flawed. Denial at 10. Stewart could not more strongly disagree with this analysis and conclusion. But first, she will address six peripheral points asserted in the Denial that, in addition to being bogus, are irrelevant.

Bogus point 1: The Denial asserts that Stewart expects a different methodology or offset amount with respect to the General Offset, which offsets the age-65 AMPP annuity against the age-65 CAM annuity. Denial at 11. Assuming an offset may be utilized, this suggestion is without basis. Moreover, it is irrelevant to whether a *properly computed* Special Offset would be smaller and, thus, produce a larger net CAM Benefit than the net CAM Benefit under the General Offset.

Bogus point 2: The Denial suggests that Stewart wants both the AMPP lump sum she received plus the $2,400.61/monthly AMPP annuity. Denial at11. But Stewart nowhere requested or even intimated in her Claim letter that she wanted either of these AMPP benefits, much less both. Rather, Stewart requested a properly computed CAM Benefit, which is a benefit under the Plan, not the AMPP.

Bogus point 3: The Denial contends that "the crediting of AMPP service and simultaneously offsetting it by a specified amount is not constrained by any rule in ERISA that Stewart has raised." Denial at 11. But the Claim explains that (i) prior to the 4/27/04 Amendment, the Plan nowhere authorized the General Offset or Special Offset; and (ii) therefore, application of either Offset reduces the benefit already accrued, violating the anti-cutback rule under ERISA §204(g) and the Plan's anti-reduction provisions [Plan

§4.2.5 (PX6) and Rule 3.5 (PX8)]. See Claim at pp. 5-6.

Bogus point 4: The Denial asserts that AT&T was not obligated by ERISA to credit Stewart with any AMPP service, and that it was fully within AT&T's discretion whether to credit service or offset the CAM Benefit. Denial at 11. But ERISA §404(a)(1)(D) requires that plans be administered in accordance with their terms (to the extent consistent with ERISA), and, pursuant to ERISA §204(g), a plan amendment may not reduce benefits already accrued. See 29 U.S.C. §1104(a)(1)(D) and 29 U.S.C. §1054(g). As explained in the Claim I discussion above, prior to the 4/27/04 Amendment, the Plan nowhere authorized the General Offset or Special Offset. Furthermore, under the MPA and §559 of the TRA, AT&T is required to recognize Stewart's Ameritech service. This was also required under the Plan and Rules as they existed before the 4/27/04 Amendment. In short, AT&T did not and does not have discretion as to whether to credit service or offset the CAM Benefit.

Bogus point 5: The Denial notes that actuary David Fleiss concludes that (i) the offsets "violate the Plan's anti-reduction provisions and the anti-cutback rules under §204(g) . . . of ERISA"; and (ii) the SOIA Rates violate the anti-forfeiture rules under ERISA §203(a) and the actuarial equivalence rules under ERISA §204(c)(3). The Denial contends that these are purely legal conclusions, unsupported by analysis, reasoning or explanation, and that Fleiss does not represent that he has any expertise appropriate to arriving at his conclusions and, therefore, his affidavit does not change the Team's interpretation of the Plan or the Team's decision on the merits. Denial at 12.

But Fleiss provided the basis for his conclusions in his Affidavit (PX53) and Supplement (PX54).

Furthermore, as noted in Fleiss's Affidavit (PX53), Fleiss is an Enrolled Actuary. An Enrolled Actuary is an individual who has satisfied the rigorous standards and qualifications set forth in the regulations of the Joint Board for the Enrollment of Actuaries and who has been approved by the Joint Board to perform actuarial services required under ERISA. See Enrolled Actuary information from IRS website (PX66). The Joint Board was established under ERISA §3041 and is composed of five voting members, three appointed by the Secretary of the Treasury and two appointed by the Secretary of Labor. Id. The PBGC also has a non-voting representative on the Board. Id. The PBGC is a principal client of Fleiss and Bolton Partners, the actuarial firm where Fleiss is employed. See Fleiss Affidavit (PX53).

The Joint Board administers two actuarial examinations, basic EA-1 and pension EA-2, that must be successfully completed by the candidate. See Joint Board for Enrollment of Actuaries Examination Program at 1 (PX67). The basic EA-1 examination tests knowledge of various mathematical and actuarial concepts. Id. The pension EA-2 examination consists of two segments (Segment A and Segment B) and tests, among other things, the "selection of actuarial assumptions," and "knowledge of relevant federal pension laws (in particular, the provisions of the Employee Retirement Income Security Act [ERISA] and related laws, regulations, and rules) as they affect pension actuarial practice." Id. at 1 and 8. Candidates taking the pension EA-2 examination are specifically

advised to, as preparation for the examination, review ERISA, pertinent Code provisions, including Code §411 (includes Code analogues to ERISA's anti-forfeiture and actuarial equivalence rules [see Code §§411(a) and 411(c)(3)]), various Treasury Regulations ("TRs"), including TR 1.411(d)-4, which has been made applicable to ERISA and enforces the anti-cutback rule, Department of Labor regulations, including those pertaining to SPDs and SMMs, and study notes prepared by the Society of Actuaries addressing the "selection of actuarial assumptions." Id. at 9-11 and 24. Candidates must also possess pension actuarial experience. Id. at 1.

As an Enrolled Actuary, Fleiss demonstrated that he had the requisite knowledge and experience with respect to the foregoing. As such, Fleiss is eminently qualified to express an opinion as to whether the offsets violate the anti-cutback rules and whether the SOIA Rates in the 4/27/04 Amendment and two subsequent amendments (collected in the Table above) violate the anti-forfeiture and actuarial equivalence rules.

Bogus point 6: The Denial asserts that "Claim II acknowledges that the interest rates applicable to the Special Offset were established by the terms of the Plan through various amendments" and, from this premise, concludes that (i) the "earnings on the assets in the trust(s) for the AMPP from January 1996 to the present" are not relevant; and (ii) the documents reflecting those earnings are not documents that must be produced under ERISA §104(b)(4) and will not be produced. Denial at 12. But Claim II nowhere acknowledges that the interest rates "applicable" to

the Special Offset are the SOIA Rates in the 4/27/04 Amendment and the two subsequent Amendments. See again Table above, collecting the SOIA Rates. On the contrary, Claim II contends that the "applicable" interest rate for computing the Special Offset is the rate expressly specified in the June 2004 SMM, which was the rate earned in the trust for the AMPP:

> This Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP and approximates the asset recapture by the pension trust had lump sum repayments been allowed.

(See PX16, Bates 1365). Because an SMM is a summary of material modifications to a ERISA plan and must be given to participants (see 29 U.S.C. §1022(a) and 1024(b)(1)), to the extent there is a conflict between the SMM and the Plan (or its Amendments), Stewart is entitled to have her CAM Benefit determined under the SMM.

As explained in the Claim II discussion, the SOIA Rates listed in the 4/27/04 Amendment and the two subsequent Amendments very likely exceed the actual rate of earnings on the assets in the pension trust. However, Stewart is unable to absolutely confirm this without the documents verifying those earnings. Accordingly, those documents are highly relevant to Claim II. Stewart requested them on that ground only, not under ERISA §104(b)(4). If the SOIA Rates do not, in fact, exceed the earnings in the pension trust, the Team should readily produce the

relevant documents and put the matter to rest. The Team's refusal to produce the documents verifying the earnings in the pension trust strongly suggests that the SOIA Rates listed in the Amendments exceed the actual rate of earnings on the assets in the pension trust.

Merits The relief requested for Claim III and first alternate relief requested for Claim II are the same, requiring the Special Offset Annuity to be determined using the same actuarial assumptions Ameritech used to derive Stewart's actuarially equivalent age-65 AMPP annuity from the DLS. See Part C below (delineating relief requested for Claims II and III). Using those assumptions to produce a *properly-computed* Special Offset results in a net CAM Benefit that is larger than the net CAM Benefit under either the General Offset or under the Special Offset formula set forth in the 4/27/04 Amendment.[22]

This conclusion is confirmed by the Chart below, which (i) summarizes information from Stewart's CAM estimates, (ii) to the extent the estimate included only the net CAM Benefit after General Offset or net CAM Benefit after Special Offset (but not both), provides the missing net CAM Benefit amount, as calculated by actuary David Fleiss (see PX 68), and (iii) provides the net CAM Benefit under a *properly-computed* Special

---

[22] Stewart is unable to calculate the net CAM Benefit after Special Offset using the actuarial assumptions requested in the second alternate relief requested under Claim II (i.e., using the earnings on the assets in the pension trust to project forward the AMPP lump sum) because the Team has refused to provide Stewart with the earnings data on the assets in the trust(s) for the AMPP.

Offset, as calculated by actuary David Fleiss using the same actuarial assumptions Ameritech utilized to derive Stewart's actuarially equivalent age-65 CAM annuity from the DLS (see PX68) (the relief requested for Claim III and first alternate relief requested for Claim II).

Chart

Stewart's benefit commencement age	net CAM Benefit under General Offset/source	net CAM Benefit under Special Offset using actuarial assumptions in 4/27/04 Amendment/source	net CAM Benefit under Special Offset using same assumptions used to derive age-65 AMPP annuity/source
50.9167	**$34.00**/PX41 at Bates 3112	$978/PX41 at Bates 3112	**$1,317.49**/computed by actuary Fleiss
55.0	**$617.79**/PX52 at Bates 3199[23]	$1292.72/PX52 at Bates 3191 and 3199	**$1,969.15**/computed by actuary Fleiss

[23] This amount is not shown on the estimate, but can be easily determined by subtracting the age-65 AMPP annuity ($2,400.61) from the age-65 CAM annuity before offset ($3,018.40).

55.5	**$603.43**/PX42 at Bates 3115[24]	$1,122.89/PX42 at Bates 3113 and 3115	**$1,922.84**/computed by actuary Fleiss
58.5	**$1,023.64**/PX47 at Bates 3136	$1,114.34/PX47 at Bates 3134 and 3135	**$2,124.45**/computed by actuary Fleiss
60.0	**$1303.12**/PX52 at Bates 3191 and 3200	$901.09/computed by actuary Fleiss	**$2,274.43**/computed by actuary Fleiss
60.5	**$1,233.43**/PX42 at Bates 3119	$530.70/computed by actuary Fleiss	**$2,158.18**/computed by actuary Fleiss
63.5	**$1,672.31**/PX47 at Bates 3138	$172.96/computed by actuary Fleiss	**$2,275.21**/computed by actuary Fleiss

[24] This amount is not shown on the estimate, but was readily determined by subtracting the $2,400.61 age-65 AMPP annuity from age-65 CAM annuity before offset.

65.0	**$1988.46**/PX52 at Bates 3191 and Bates 3202	$0.00/computed by actuary Fleiss	**$2,398.65**/computed by actuary Fleiss
65.5	**$1,863.43**/PX42 at Bates 3121	$0.00/computed by actuary Fleiss	**$2,204.38**/computed by actuary Fleiss

The Chart shows that (i) Stewart's net CAM Benefit under the General Offset generally steadily increases as the CAM Participant grows older; (ii) by contrast, Stewart's net CAM Benefit calculated under the Special Offset formula set forth in the 4/27/04 Amendment increases until age 55 and then steadily decreases; (iii) the cross-over point where Stewart's net CAM Benefit will be larger under the General Offset formula than the net CAM Benefit under the Special Offset formula set forth in the 4/27/04 Amendment is between age 58.5 and 60; but (iv) if the Special Offset is computed using the same actuarial assumptions Ameritech utilized to derive Stewart's actuarially equivalent age-65 AMPP annuity from the DLS (the relief requested for Claim III and the first alternate relief requested for Claim II), Stewart's net CAM Benefit after such *properly-computed* Special Offset will be larger at **every** age than **either** the net CAM Benefit under the General Offset or net CAM Benefit under the Special Offset formula set forth in the 4/27/04 Amendment.

C. Relief Requested for Claims II and III

With respect to Claim II (violation of ERISA's anti-forfeiture rules), Stewart requests that the Plan Administrator--

> Calculate the Special Offset Annuity using (1) the same actuarial assumptions Ameritech utilized to derive Stewart's actuarially-equivalent age-65 AMPP annuity from the DLS, **or** (2) for the period the AMPP lump sum accumulates interest under the Special Offset methodology set forth in the 4/27/04 Amendment, the interest rate that reflects the earnings on the assets in the pension trust during the projection period, *whichever produces the smaller Special Offset Annuity and, thus, larger net CAM Benefit*; and
>
> Produce the documents that show the rate of earnings on the assets in the pension trust from January 1996 through the present.

With respect to Claim III (violation of ERISA's actuarial equivalence rules), Stewart requests that the Plan Administrator–

> Calculate the Special Offset Annuity using the same actuarial assumptions Ameritech used to derive Stewart's actuarially-equivalent age-65 AMPP annuity from the DLS.

Respectfully submitted,

Eva T. Cantarella, Esq.
Attorney for Kathleen A. Stewart

ETC/etc (w/PX55 through PX82)
cc: Kathleen A. Stewart

PX27–Enrolled Actuary Information

Internal Revenue Service
United States Department of Treasury

Enrolled Actuary Information

What is an Enrolled Actuary?

An Enrolled Actuary is any individual who has satisfied the standards and qualifications as set forth In the regulations of the Joint Board for the Enrollment of Actuaries and who has been approved by the Joint Board to perform actuarial services required under the Employee Retirement Income Security Act of 1974 (ERISA).

How to Become an Enrolled Actuary

A candidate for enrollment must fulfill certain knowledge and experience requirements, which are set forth in the Joint Board Regulations.

In addition, a candidate must submit a completed Form 5434 (Joint Board for the Enrollment of Actuaries Application for Enrollment).

Administration of the Enrolled Actuary Program

The Joint Board, which was established pursuant to section 3041 of ERISA, is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA The Joint Board is

composed of five members, three appointed by the Secretary of the Treasury and two appointed by the Secretary of Labor. In addition, the Pension Benefit Guaranty Corporation has one representative with no voting power.

The Executive Director of the Joint Board for the Enrollment of Actuaries is responsible for administering the Enrolled Actuary program and conducting disciplinary proceedings.

Regulations Governing Enrolled Actuaries

Enrolled Actuaries are subject to the Joint Board Regulations and Treasury Department Circular Number 230.

- View the Joint Board Regulations
- View Treasury Department Circular 230.

Enrolled Actuary - Frequently Asked Questions

Standards of Practice for Tax Professionals

OPR At-a-Glance

* We welcome your comments and suggestions

http://www.irs.gov/taxpros/actuaries/article/0,,id=97441,00.html

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

AMERICAN SOCIETY OF PENSION PROFESSIONALS AND ACTUARIES

SOCIETY OF ACTUARIES

EXAMINATION PROGRAM

MAY 2008 BASIC (EA-1) EXAMINATION

MAY 2008 PENSION EA-2 (SEGMENT B) EXAMINATION

NOVEMBER 2008 PENSION EA-2 (SEGMENT A) EXAMINATION

January 2008
Pages 13 and 25 revised February 19, 2008

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INTRODUCTION

The Joint Board for the Enrollment of Actuaries administers two actuarial examinations that must be successfully completed by individuals to satisfy the actuarial knowledge requirement for the designation of Enrolled Actuary.

The actuarial knowledge requirement for enrollment is augmented by a requirement that a candidate have certain responsible pension actuarial experience. Through a combined knowledge and experience requirement, the Joint Board seeks to determine which applicants for the designation of Enrolled Actuary have the skills necessary to protect the interests of pension plan participants.

The examinations are structured as follows:

The basic (EA-1) examination tests knowledge of (1) the mathematics of compound interest and practical financial analysis and (2) the mathematics of life contingencies and practical demographic analysis.

The pension (EA-2) examination, which consists of two segments, tests

(a) in Segment A, the selection of actuarial assumptions, actuarial cost methods, and the calculation of minimum required and maximum deductible contributions, and

(b) in Segment B, knowledge of relevant federal pension laws (in particular, the provisions of the

Employee Retirement Income Security Act and related laws, regulations, and rulings, as they affect pension actuarial practice.

The EA-1 and the EA-2 (Segment B) examinations are given each May; the EA-2 (Segment A) examination is given each November.

A candidate for enrollment may be able to satisfy part of the actuarial knowledge requirement of the Joint Board regulations by earning a degree in actuarial mathematics Or its equivalent from an accredited college or university. Such candidates will not have to pass the EA-1 examination. The courses in the plan of study and their successful completion must comply with guidelines adopted by the Joint Board for determining what demonstrates the requisite knowledge. The Joint Board will grant a waiver of the EA-1 examination to any candidate who received credit from the Society of Actuaries (SOA) for Courses FM and MLC of the SOA's education and examination program.

Both the EA-1 and EA-2 actuarial examinations consist solely of multiple-choice questions. Each question will be assigned from one to five points. Point values for each question will be shown at the beginning of the question. The score on each examination is based on the questions answered correctly; no credit is given for omitted answers and no credit is deducted for wrong answers.

ALL EXAMINATIONS

Most examination questions require arithmetical computations. Each candidate should bring an electronic calculator to the examination center for use in performing computations. Calculators should be able to compute financial functions such as amortization payments, present and future values, interest rates, time periods, logarithmic functions, and exponential functions. Calculators are subject to the following conditions:

The examination supervisor will ascertain that all calculators: (a) have self-contained power sources, (b) are noiseless, and (c) do not have the capability to retain text. A candidate generally will be allowed to take the examination using a questionable calculator. However, any questions raised as to the appropriateness of a calculator will be noted on the supervisor's report along with the candidate's number and the make and model number of the calculator; a determination will be made later as to whether the calculator was permissible.

Candidates are solely responsible for the proper functioning and operation of their calculators during the examination. In addition, candidates must indicate on their examination answer sheets both the make and the model number of any calculator used.

The use of a calculator that does not meet the conditions above constitutes an irregularity and may be sufficient cause for disqualification from

the examination.

In preparing the examinations, great care is taken so that each question has one and only one correct answer based on the data given. Each question is reviewed by all members of the Advisory Committee on Actuarial Examinations and by representatives of the sponsoring organizations. Nevertheless, because mistakes can occur, a request for consideration of an alternative answer to a given question, or for disregarding a question, will be entertained by the Joint Board but only under the following conditions:

An appeal must be made in writing and postmarked not later than six months after the examination was administered.

The appellant must describe in detail the fault found with the question and an alternative answer if one is claimed.

In the case of claimed ambiguity, credence will be given to an alternative interpretation only to the extent that such interpretation is one that might be reasonably made and is not strained in the light of attendant circumstances. This policy is of positive benefit to most candidates; otherwise, it would be necessary to burden each question with numerous qualifications and stipulations that the qualified practitioner does not require and which would make the question more difficult to read.

Not all topics listed in the syllabus of this examination program are necessarily covered on any particular year's examination, nor are the examination questions

necessarily confined solely to the listed topics or suggested readings. Also, it is assumed that all candidates are familiar with the basic concepts and techniques of algebra and calculus.

Candidates are urged to develop a thorough understanding of the conditions generally or specifically applicable to all examination questions as set forth later in this examination program. Conditions for each examination will be included in the applicable examination booklets.

In addition, candidates should familiarize themselves with the list of limits, tables, and formulas applicable to the EA-2 (Segment A) and EA-2 (Segment B) examinations, as set forth in this program. A copy of the appropriate list will also be included in the respective examination booklet.

Questions on both the Basic EA-1 examination and the Pension EA-2 (Segments A and B) examinations may contain commutation functions. Candidates who are not familiar with commutation functions may wish to order the Study Note "Commutation Functions" available from the SOA. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

Important Notices and Changes from Previous Programs

1. For purposes of the May 2008 pension EA-2 (Segment B) examination and the November 2008 EA-2 (segment A) examination, and the, IRS, Treasury and PBGC releases granting disaster relief should be ignored.

2. Effective May 2007, questions on both the basic EA-1 examination and the pension EA-2 (Segments A and B) examination may contain commutation functions. **Candidates are expected to understand and be able to use commutation functions.** Candidates who are not familiar with commutation functions may wish to order the Study Note "Commutation Functions" available from the SOA. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

3. **The November 2008 EA-2 (Segment A) examination will include material relating to the funding rule changes under the Pension Protection Act of 2006 ("PPA 2006") which are effective January 1, 2008, and will not reflect pre-PPA 2006 funding rules. The syllabus, suggested readings and general conditions have been substantially revised to reflect this change.**
THE CANDIDATE IS CAUTIONED TO READ THE GENERAL CONDITIONS CAREFULLY.

4. Significant changes made to the exams since they were last given are marked with an asterisk (*) in the pages that follow.

BASIC EA-1 EXAMINATION

MAY 2008

The EA-1 examination is two-and-one-half hours in length and covers (1) the mathematics of compound interest and practical financial analysis and (2) the mathematics of life contingencies and practical demographic analysis.

Questions on the Basic EA-1 examination may contain commutation functions. **Candidates are expected to understand and be able to use commutation functions**. Candidates who are not familiar with commutation functions may wish to order the Study Note "Commutation Functions" available from the SOA. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

Syllabus

Mathematics of compound interest and financial analysis (approximately 25% - 50% of the examination)

Nominal and effective rates of interest and discount, force of interest, accumulated value factors, and present value factors.

All forms of annuities including, but not limited to annuities certain, increasing and decreasing annuities,

annuities in which the payment frequency is not the same as the frequency at which interest is compounded, and perpetuities.

Amortization schedules and sinking funds, including the determination of outstanding principal, the split of payments into principal and interest, and the determination of required periodic payments.

Bonds and related securities, including bond price formulas, bond accounting, the split of periodic payments into amortization and interest, mortgages, and variable interest securities.

Determination of fund yield rates and effective rates of return using time-weighted and dollar-weighted methods.

Duration and immunization of cash flows.

Asset reporting, including realized and unrealized gains/losses, asset reconciliation, book value versus market value, and receivables.

Financial analysis, including inflation and its role, elements of risk and uncertainty, yield curves and available investments, and employee compensation increases.

Mathematics of life contingencies and demographic analysis (approximately 50% - 75% of the examination)

Measurements and demographic analysis of mortality, including the definition and application of standard mortality probability symbols and force of mortality.

Approximation of fractional period decrements using a uniform distribution assumption.

Measurement and demographic analysis of disability, employee turnover and employee retirement, including construction of single and multiple decrement tables.

Adjustments to mortality, disability, turnover and retirement rate tables, such as age setbacks and set forwards, select and ultimate tables, projection scales and generation adjustments.

Life annuities, including life annuities with a term certain.

Population theory, including complete and curtate expectation of life, central death rates, stationary population, and average ages in a stationary population.

Multiple life functions, probabilities and annuities.

Multiple decrement functions, including associated single decrement tables, probabilities of decrement and the construction of multiple decrement tables from associated single decrement tables.

Principles of actuarial equivalence and related calculations.

One-year term costs for ancillary benefits.

Life insurance, including basic forms, single and annual premiums, varying insurance, and insurance and annuity relationships.

Suggested Readings for EA-1

The Advisory Committee on Actuarial Examinations believes that most (if not all) of the topics in the syllabus are covered in one or more of the following sources. There is a great deal of overlap among the following references. Candidates do not need to use them all. The references listed below are to identify available resources from which the candidate may select. This list is not meant to describe or modify the syllabus listed above.

Batten, R. W. Life Contingencies: A Logical Approach to Actuarial Mathematics, (2005); ACTEX Publications, P.O. Box 974, Winsted, CT 06098. **(This is *strictly* a supplement to *Actuarial Mathematics* and would be found to be of little value in the absence of a prior, detailed study of that text.)**

Bowers, N.L. et. al., Actuarial Mathematics, (Second Edition -1997) (excluding Chapters 1,2, 12, 13,14, and 15); Society of Actuaries, 475 N. Martingale Road, Suite 600, Schaumburg, IL 60173-2226. [First edition (1986) may also be used (excluding chapters I, 2, 11, 12, and 13)]

Brown, R.L., Introduction to Mathematics of Demography, (Third Edition - 1997), Chapters 3-5; ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Broverman, S.A., Mathematics of Investment and Credit, (Third Edition - 2004); ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Cunningham, R.J., Herzog, T.N, London, R.L., Models for Quantifying Risk, Chapters I, 5, 6, 9-15; ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Jordan, C.W., Life Contingencies, (Second Edition - 1967, Second Printing 2003); Society Of Actuaries, 475 N. Martingale Road, Suite 600, Schaumburg, II 60173-2226

Kellison, S.G., The Theory of Interest. (Second Edition - 1991); Irwin Professional Publishers. Available from McGraw-Hill, 6350 Crested Butte Circle, Colorado Springs, CO 80919

London, D., Survival Models and Their Estimation, (Third Edition - 1997), Chapters 1, 3-6, 8-9; ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Parmenter, M.M., The Theory of Interest and Life Contingencies with Pension Applications: A Problem-Solving Approach, (Third Edition - 1999); ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Zima, P. and Brown, R.L., Mathematics of Finance (2001), (Fifth Edition); McGraw-Hill Ryerson Limited, 300 Water Street, Whitby, ON, LIN 9B6

Actuarial Standard of Practice, No. 27, "Selection of Economic Assumptions for Measuring Pension Obligations"

Actuarial Standard of Practice, No. 35, "Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations

Society of Actuaries Study Material

The Society of Actuaries has developed various study notes for the use of students preparing for its examinations on these subjects. These study notes are revised periodically, and new study notes may be added. As of December 31, 2007, the following study notes are available. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

Measurement of Investment Return
Actuarially Equivalent Benefits
Commutation Functions

All candidates for the Joint Board examinations, even if not affiliated with the Society of Actuaries, can obtain an order form at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form. It should be realized, however, that such material was not necessarily drawn up with the particular nature of the Joint Board examinations in mind.

Conditions Generally Applicable to All EA-1 Examination Questions

If applicable, the following conditions should be considered a part of the data for each question, unless otherwise stated or implied:

(1) The normal retirement age is 65.

(2) Retirement pensions commence at normal retirement age and are paid monthly for life at the beginning of each month.

(3) There are no pre-retirement death or disability benefits.

(4) Actuarial equivalence is based on the mortality table and interest rate assumed for funding purposes.

(5) Interest rates that are compounded more frequently than annually are expressed as nominal rates.

(6) Where multiple lives are involved, future lifetimes are assumed to be independent of each other.

(7) The term "gross single premium" is equivalent to "contract single premium;" the term "net single premium" is equivalent to "single benefit premium;" the term "gross annual premium" is equivalent to "annual contract premium;" the term "net annual premium" is equivalent to "annual benefit premium."

(8) There are no policy loans in effect.

(9) For a bond, the face amount and the redemption value are the same.

(10) Interest rate equals yield rate.

(11) The term "duration" means "Macaulay duration".

PENSION EA-2 (SEGMENT B) EXAMINATION MAY 2008

The EA-2 (Segment B) examination is two-and-one-half hours in length and covers relevant pension laws (in particular the provisions of the Employee Retirement Income Security Act (ERISA) and related laws, regulations, and rulings) as they affect pension actuarial practice. The EA-2 (Segment B) examination presupposes knowledge of the topics covered in the EA-1 examination and in the EA-2 (Segment A) examination.

Questions on the Pension EA-2 (Segment B) examination may contain commutation functions. **Candidates are expected to understand and be able to use commutation functions.** Candidates who are not familiar with commutation functions may wish to order the Study Note "Commutation Functions" available from the SOA. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

Syllabus

Requirements with respect to reporting and disclosure, including underfunded plans, reductions in future benefit accruals, and reportable events.

*Funding based limits on benefits and benefit accruals under single employer defined benefit plans.

Nondiscrimination requirements including those related to plan participation, coverage, and permitted disparity.

Requirements with respect to vesting, service credits, employee contributions, accrued benefits, normal retirement.

Requirements with respect to and adjustments for early retirement, postponed retirement, joint and survivor annuities, and pre-retirement death benefits.

Determination of benefits, including permitted disparity.

PBGC premium requirements.

Plan termination requirements including standard and distress terminations, involuntary terminations, missing participants, guaranteed benefits, allocation of assets, plan liability and employer liability.

Withdrawal liability under multi employer plans.

Excise taxes other than for funding requirements.

Prohibited transactions and fiduciary standards.

Standards of performance and professional conduct for enrolled actuaries.

Suggested Readings for EA-2 (Segment B)

New or revised sources, if any, are asterisked. Pension law and IRS promulgations can be found in publications of Warren, Gorham & Lamont, Commerce Clearing House, Maxwell Macmillan, Research Institute of America, and similar organizations. This list is not meant to describe or modify the syllabus listed above.

For purposes of this examination, IRS, Treasury and PBGC releases granting disaster relief should be ignored.

Employee Retirement Income Security Act of 1974 (ERISA), as amended through December 31,2007.

2008 PBGC Form 1, including Schedule A and instructions.

Internal Revenue Code sections, all as amended through December 31, 2007:

318	Constructive Ownership of Stock
401	Qualified Plans - definition Excluding subsections - (f),(g),(i),(m),(n),(o)
410	Minimum Participation Standards Excluding subsections - (c),(d)

411	Minimum Vesting Standards Excluding subsections - (e)
413	Collectively Bargained Plans, etc.
414	Definitions and Special Rules - controlled group, multiemployer, mergers, HCE, SLOB, compensation Excluding subsections - (d),(e),(o),(t),(u)
417	Minimum Survivor Annuity Requirements
420	Transfers of Excess Pension Assets to Retiree Health Accounts
*436	Funding based limits on benefits and benefit accruals under single employer defined benefit plans
1563	Definitions and Special Rules
4974	Excise Tax on Certain Accumulations in Qualified Retirement Plans
4975	Tax on Prohibited Transactions
4980	Tax on Reversion of Qualified Plan Assets to Employer
4980F	Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements
6057	Annual Registration
6058	Information Required in Connection with Certain Plans of Deferred Compensation
6059	Periodic Report of Actuary

Joint Board regulations (20 CFR Part 901.20) governing the performance of actuarial services under

ERISA

Treasury Department Circular No. 230 (31 CFR Part 10) Section 10.3

IRS Promulgations:

Regulations

*1.40(a)-1	Normal retirement age
1.401(a)(4)	Nondiscrimination requirements
1.401(a)(26)	Minimum participation requirements
1.401(*l*)	Permitted disparity
1.410(b)	Minimum coverage requirements
1.411(d)-4	Section 411(d)(6) protected benefits
1.414(s)	Definition of Compensation
1.414(q)-1T	Highly compensated employees
1.417(a)(3)-1	Disclosure on relative values of optional forms of benefit
1.417(e)-1	Restrictions and valuations of distributions from plans subject to sections 401(a)(II) and 417
54.4980F	Final regulations implementing section 659 of EGTRRA
301.6057-1	Employee retirement benefit plans; identification of participant with deferred vested retirement benefit

301.6057-2	Employee retirement benefit plans; notification of change in plan status
301.6058-1	Information required in connection with certain plans of deferred compensation
301.6059-1	Periodic report of actuary

Revenue Rulings

81-11	Minimum accrued benefits; fractional rule; break-in service
81-140	Suspension of Benefits due to reemployment
89-60	Interest rates used in determining employees' "accumulated contributions"
89-87	Terminated plans must distribute as soon as administratively feasible after plan
92-66	Must an early retirement window benefit be provided permanently to all employees under a plan where the employer amends its plan to make the benefit available for substantially consecutive, limited periods of time?
2001-62	Mortality tables prescribed under section 415(b)(2)(E)(v) and the applicable mortality table under section 417(e)(3)(A)(ii)(I)

2002-42	Partial termination merger or conversion of money purchase plan: IRC section 4980F notice and 204(h) of ERISA
2002-43	General rules relating to excise tax on prohibited transactions
2003-65	Vesting service upon resumption of accruals
2003-85	Application of IRC section 4980 excise tax
2004-65	Election of enhanced pension benefit under IRC section 420
*2007-67	Application of segment interest rates and mortality rates relative to IRC section 417(e)

Notices

87-20	Temporary guidance on interest rate used in calculating defined benefit plan present value and benefits
88-25	No year of service (including years of service before the effective date of the OBRA 1986 provisions) may be disregarded because of the attainment of any age in determining benefits payable to employees from certain employee benefit plans
88-126	Regulation on continued benefit accruals will depart from EEOCS; pre-1988 service may not be ignored because of age

97-75	Guidance relating to the amendments to the minimum distribution requirements of section 401(a)(9) of the Code made by section 1404 of the Small Business Job Protection Act of 1996, Pub. L. 104-188
2001-56	Effective dates for certain amendments made by EGTRRA
2004-78	Distributions under the Pension Funding Equity Act of 2004

PBGC Promulgations:

Regulations

4001	General and Definitions
4006	Computing Premiums
4007	Paying Premiums
4010	Notification to PBGC
4022	Guaranteed Benefits
4041	Terminations
4043	Reportable Events
4044	Allocation of Assets
4050	Missing Participants
4062	Termination Liability for Sponsor
4211	Multiemployer Plan Withdrawal Liability
4219	Multiemployer Plan Withdrawal Liability

PBGC Technical Updates:

00-7	Increased Guarantee Limit for Multiemployer Plans
*07-2	Affects of PP A 2006 on 4010 and 4043 Reporting
*07-3	Lump Sum Issues in Standard Terminations

DOL Promulgations:

Regulations

	DEFINITIONS
2510.3-3	Definition of pension plans
2510.3-21	Definition of fiduciary
	REPORTING AND DISCLOSURE
2520.101-4	Annual Funding Notice for multiemployer defined benefit pension plans
2520.102-2 2520.102-3 & 2520.104b-2	Summary plan description (SPD)
2520.103-1	Contents of the annual report
2520.103-10	Annual report financial schedules
2520.104-42	Waiver of certain actuarial information in the annual report
2520.104-46	Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants

2520.104a-5	Annual report filing requirements
2520.104b-3	Summary of material modifications to the plan and changes in the information required to be included in the SPD
2520.104b-10	Summary annual report (SAR)
2520.107-1	Use of electronic media for maintenance and retention of records
	FIDUCIARY RESPONSIBILITY
2550.403a-1	Establishment of trust
2550.403b-1	Exemptions from trust requirement
2550.408b-2	General statutory exemption for services or office space
2550.408c-2	Compensation for services

*These are currently found in the Federal Register (FR), and also on the DOL/EBSA website (see below for links). When a final rule is codified in the Code of Federal Regulations (CFR) the changes will be reflected as indicated in the FR release.

*72 FR 64710	On revision of annual information return/reports; final rule (note: this will amend 29 *CFR Part 2520)* http://www.dol.gov/ebsa/regs/fedreg/final120071116.pdf

*72 FR52004	On DOL's interim final rule on annuities (note: this will amend 29 *CFR 2509)* http://www.dol.gov/ebsa/regs/fedreg/finaIl2007017744.pdf
*72 FR64731	On revision of annual information return/report; notice (note: notices do not get codified in the CFR http://www.dol.gov/ebsa/regs/fedreg/notices/20071116.pdf

Interpretive Bulletins

2509.75-2	Prohibited Transactions
2509.75-4	Indemnification of fiduciaries
2509.75-5 & 2509.75-8	Questions and answers relating to fiduciary responsibility Section 408(c)(2) of ERISA
2509.75-6	
2509.75-9	Guidelines on independence of accountant retained by employee benefit plan
2509.95-1	Fiduciary standard under ERISA when selecting an annuity provider

Society of Actuaries Study Material

The Society of Actuaries has developed various study notes for the use of students preparing for its examinations on these subjects. These study notes are revised periodically, and new study notes may be added. As of December 31,2007, the following study

notes are available.

Pension Plan Terminations with update

Contributory Pension Plans after OBRA '89

Update for the Pension Plan Terminations Study Note

Reportable Events and Form 200 Requirements

Circular No. 230 (Section 10.3)

Tax Forms and PBGC Contacts

Summary of Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) Provisions Relating to Pension and Profit-Sharing Plans

Penalty Taxes under the U.S. Internal Revenue Code

Commutation Functions

All candidates for the Joint Board examinations, even if not affiliated with the Society of Actuaries, can obtain an order form at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form. It should be realized, however, that such material was not necessarily drawn up with the particular nature of the Joint Board examinations in mind.

The Society of Actuaries also suggests the following text:

> Multi-employer Retirement Plans: Handbook for the 21st Century (2003); International Foundation of Employee Benefits; P.O. Box 69, Brookfield, WI 53008

American Society of Pension Professionals and Actuaries Study Material

The American Society of Pension Professionals and Actuaries (ASPPA) suggests the following books. These books, while not designed specifically for the examination, cover much of the syllabus and more.

> McGhie, G. N., The Defined Benefit Answer Book (Third Edition), Aspen Publishers; 7201 McKinney Circle; P.O. Box 990; Frederick, MD 21701
>
> Tripodi, Sal L., The ERISA Outline Book, (2007 Edition)

The ERISA Outline Book is available from ASPPA. Information can be found on the ASPPA website at www.asppa.org/resources/res_erisa.htm

Conditions Generally Applicable to All EA-2 (Segment B) Examination Questions

If applicable, the following conditions should be considered a part of the data for each question, unless otherwise stated or implied.

For purposes of this examination, IRS, Treasury and PBGC releases granting disaster relief should be ignored.

General Conditions Regarding Plan Provisions

(1) "Plan" or "pension plan" means a defined benefit pension plan.

(2) The plan is qualified under IRC section 401. Thus, for example, any benefit formulas should be understood to be limited by other plan provisions required by the Code.

(3) The plan is sponsored by a single employer; the sponsoring employer is a taxable entity and is not a member of a controlled group.

(4) The plan is not established or maintained in connection with a collectively bargained agreement.

*(5) Employees subject to a collective bargaining agreement are non-professional. If employees covered by a collective bargaining agreement are covered by the plan, their coverage is pursuant to that collective bargaining agreement.

(6) The plan year, the employer's limitation year, and the employer's tax year are all the calendar year.

(7) The normal retirement age is 65.

(8) Retirement pensions commence at normal retirement age and are paid monthly for life at the beginning of each month.

(9) The plan covers all active employees of the employer; there is no age or service requirement for participation. Thus, when referring to active employees, the terms "employee" and "participant" are synonymous.

(10) There are no, and never have been, mandatory or voluntary employee contributions.

(11) Service for purposes of vesting and benefit accrual is credited on the basis of time elapsed since date of hire.

(12) When the normal retirement benefit is computed as a dollar amount, or as a percentage of compensation, for each year of service, the accrued benefit is defined likewise.

(13) Actuarial equivalence is based on the mortality table and interest rate assumed for funding purposes.

(14) Qualified joint and survivor annuities and qualified preretirement survivor annuities are provided in such manner that they result in no cost to the employer.

(15) The plan has not been top-heavy in any year.

(16) The plan has not been amended since its effective date.

General Conditions Regarding Funding

(17) Any actuarial valuation encompasses not only all active employees but also retired employees, beneficiaries, and former employees entitled to vested deferred pensions.

(18) The valuation date is the first day of the plan year; i.e., participant data, present values, asset values, etc. are as of that date. Also, normal costs are payable annually, the first being due on the valuation date.

(19) Unless otherwise specified, the assumed retirement age is the normal retirement age.

(20) The terms "actuarial value of assets" and "market value of assets" mean the values developed for purposes of IRC section 412, before being adjusted as required under funding methods of the aggregate type for items such as the existing credit balance or the outstanding balances of certain bases.

(21) All actuarial assumptions are deemed "reasonable" and meet the "best estimate" criterion.

(22) The adoption date of any plan or amendment is the same as its effective date.

(23) The term "minimum required contribution" means the smallest contribution for a plan year which will prevent a funding deficiency or unpaid minimum contribution at the end of that plan year, without regard to the alternative minimum funding standard account. Amounts to be amortized are not combined or offset against one another.

(24) The employer is taxable, and all employer contributions for each prior plan year have been deducted by the employer for its tax year coincident with such plan year.

(25) The full funding limitation has never applied.

(26) The full funding limitations based on current liability shall be disregarded if sufficient information to determine such limitations is not provided.

(27) For purposes of determining the deductible limit, the unfunded current liability shall be disregarded if sufficient information to determine such liability is not provided.

(28) Unless separate current liabilities are provided, the current liability is the same for all purposes.

Miscellaneous General Conditions

(29) All plan provisions and funding comply with all temporary and final regulations under the Internal Revenue Code and ERISA, as amended through December 31, 2007

(30) For multiemployer plans, disregard any industry-specific rules.

(31) The employer has never maintained a defined contribution plan or another defined benefit plan. No employee has been covered by a defined contribution or defined benefit plan that is required to be aggregated with his employer's plans for purposes of IRC section 415.

(32) The terms "applicable mortality (table)" and "applicable interest (rate)" are as defined in IRC section 417(e)(3).

(33) For purposes of nondiscrimination testing under 401 (a)(4), grouping of allocation rates or accrual rates has not been used unless there is specific reference to it

(34) For purposes of coverage testing under IRC section 410(b), "snapshot" testing is not used and permitted disparity is not imputed.

*(35) The plan is not an applicable defined benefit plan described in IRC section 411(a)(13)(C) unless otherwise stated.

(36) Where IRC section 401(a)(17) applies, compensations do not exceed these limits unless sufficient information to apply the limits is provided.

(37) Benefits do not exceed IRC section 415 limits unless sufficient information to apply these limits is provided.

(38) Unless otherwise specified, the plan is covered by the PBGC.

(39) All union plans are collectively bargained and all union employees are subject to collective bargaining.

(40) References to law and regulation section numbers are for clarity and can be assumed to be correct.

If applicable, the preceding conditions should be considered a part of the data for each question, unless otherwise stated or implied.

LIMITS, TABLES AND FORMULAS (Included with the 2008 EA-2 (Segment B) examination)

[Note: the Limits, Tables and Formulas have been eliminated from this Appendix]

PENSION EA-2 (SEGMENT A) EXAMINATION

NOVEMBER 2008

The EA-2 (Segment A) examination is four hours in length and covers the selection of actuarial assumptions and calculation of minimum required and maximum lax-deductible contributions under current pension law, along with the related actuarial mathematics. The EA-2 (Segment A) examination presupposes knowledge of the topics covered in the EA-1 examination.

Questions on the Pension EA-2 (Segment A) examination may contain commutation functions. Candidates who are not familiar with commutation functions may wish to order the Study Note "Commutation Functions" available from the SOA. An order form can be obtained at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form.

Syllabus

Minimum funding requirements including, but not limited to:

For single employer plans, the basics of the minimum funding standards including those for at-risk plans, transition rules, carryover balance, prefunding balance, and waivers of minimum required contributions

For multiemployer plans, the basics of the minimum funding standards including those for plans in critical or endangered status, amortization periods, credit balance, funding standard account, amortization period extensions, and waivers of funding deficiencies

Required quarterly contributions and liquidity shortfall

The effect of spinoffs and mergers on the minimum funding requirements

Maximum deductible contributions for federal income tax purposes including the treatment of contribution carryovers and contributions for a plan year which are deducted for the prior taxable year.

Actuarial cost methods, including unit credit, projected unit credit, entry age normal, individual level premium, aggregate, individual aggregate, attained age normal, frozen initial liability, shortfall, one-year term, and variations thereof.

Determination of experience gains and losses and analysis by source.

Effect on valuation results of changes in plan provisions, actuarial cost methods, asset valuation methods, and actuarial assumptions.

Valuation of ancillary benefits.

Maximum benefit limitations.

Selection of actuarial assumptions.

Effect on valuation results of various patterns of experience, including experience with respect to investment earnings, changes in asset value, mortality, disability, employee turnover, changes in compensation, retirement, choice of retirement options, and Social Security.

Additional requirements with respect to top-heavy plans.

Determination of the actuarial value of assets.

Valuation techniques for handling employee contributions and split-funded life insurance arrangements.

Penalty taxes for failures to meet minimum funding standards and for contributions in excess of tax deductible limits.

Suggested Readings for EA-2 (Segment A)

The Advisory Committee on Actuarial Examinations believes that most (if not all) of the topics in the syllabus are covered in one or more of the following sources. There is a great deal of overlap among the books listed below. Candidates do not need to use them all. The references listed below are to identify available resources from which the candidate may select. This list is not meant to describe or modify the syllabus listed above. New or revised sources, if any, are asterisked. Pension law and IRS promulgations can be found in publications of Warren, Gorham & Lamont, Commerce Clearing House, Maxwell Macmillan, Research Institute of America, and similar organizations.

IT IS EXPECTED THAT THE SUGGESTED READINGS FOR EA-2 (Segment A) WILL BE REVISED EXTENSIVELY BECAUSE OF PPA 2006.

Aitken, W.H., A Problem-Solving Approach to Pension Funding and Valuation, (2nd Edition - 1996); ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Anderson, A. W., Pension Mathematics for Actuaries, (3.d Edition - 2006); ACTEX Publications, P.O. Box 974, Winsted, CT 06098

Berin, B. N., Fundamentals of Pension Mathematics, (1989); Society of Actuaries, 475 N. Martingale Road, Suite 600, Schaumburg, IL 60173-2226

Farrimond, W., Mayer, D., Farber, D., and Matray, G., Actuarial Cost Methods, A Review (3,d Edition -1999); ASPPA Book Order Department, Department 417, P.O. Box 753, Waldorf, MD 02604

Actuarial Standard of Practice No.4, "Measuring Pension Obligations"

Actuarial Standard of Practice No. 27, "Selection of Economic Assumptions for Measuring Pension Obligations"

Actuarial Standard of Practice No. 35, "Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations"

Employee Retirement Income Security Act of 1974 (ERISA) sections 302, 303, 304, and 305, as amended through June 30, 2008

Draft 2008 Schedules SB and MB of Form 5500

Link to draft Schedule SB:
http://www.dol.gov/ebsa/pdf/2008-5500-Schedule-SB.pdf

Link to draft Schedule MB:
http://www.dol.gov/ebsa/pdf/2008-5500-Schedule-MB.pdf

For purposes of this examination, IRS, Treasury and PBGC releases granting disaster relief should be ignored.

Internal Revenue Code Sections, as amended through June 30. 2008:

401(a)(17)	Requirements for qualification, compensation limit
404	Deductible employer contributions to a deferred-payment plan
412	Minimum funding standards
413	Collectively bargained plans, etc.
415	Limitations on benefits & contributions excluding subsections (m), (n)
416	Top heavy rules
417(e)	Restrictions on cash outs
430	Minimum funding requirements for single-employer defined benefit pension plans
431	Minimum funding requirements for multiemployer defined benefit plans
432	Additional funding rules for multiemployer plans in endangered status or critical status
4971	Taxes on failure to meet minimum funding standards
4972	Tax on nondeductible contributions to qualified employer plans
6059	Periodic report of actuary

Regulations:

1.401(a)(2)-1	Refund of mistaken contributions and withdrawal liability payments to multiemployer plans
1.401(a)(17)	Limitation on annual compensation
1.404(a)-14	Special Rules in connection with ERISA - Deductible Limits
11.412(c)-12	Extension of time to make contributions
1.412(c)(1)-1	Determinations to be made under funding method
1.412(c)(1)-2	Shortfall method
1.412(c)(2)-1	Valuation of plan assets; reasonable actuarial methods
1.412(c)(3)-1	Reasonable funding methods
1.414(*l*)	Mergers and consolidations of plans or transfers of plan assets
1.415	General rules with respect to limitations on benefits and compensations under qualified plans
1.416-1	Questions and answers to top-heavy plans
301.6059-1	Periodic report of actuary

Revenue Rulings:

77-2	Change in benefit structure after valuation date

78-48	Assumptions & methods specified in plan
78-331	Assumption that employees retire at normal retirement date
79-237	Terminating plan - funding standard account and penalty taxes
80-315	Supplementary benefits
81-13	Full funding limitation
81-136	Election to receive benefits less than plan provides
81-137	Separate funding account for separate plans
81-195	Effect of 415 limits on minimum and maximum contribution levels, and inability to project future increases in limits for funding purposes
81-213	Experience gains & losses, amortizations
81-214	Interest charges in funding standard account
81-215	Effect of 415 limits after valuation date but within plan year
81-202	Qualification; Discrimination; Comparing Benefits or Contributions in Separate Plans
82-125	Full funding limitation and deductible limit
84-62	Deductible limit under 404(a)(I)(A)

85-131	Reasonable allocation of past and future liabilities under unit credit method when 415 limit is involved
86-48	Determining "Benefits on a Termination Basis" for the purpose of a spin-off. (i.e. early retirement benefits, optional forms, ...)
95-28	(Unisex) mortality table, additional funding charge
95-31	Quarterly contributions and liquidity
96-7	Disability table, additional funding charge
2000-20	Minimum funding standards - funding standard account - amortization bases
2001-51	Limitations on benefits and contributions under qualified plans
2001-62	Mortality tables prescribed under section 415(b)(2)(E)(v) and the applicable mortality table under section 417(e)(3)(A)(ii)(I)
2003-11	Amendment to increase limitation on compensation for former participants
2003-83	Entry age normal funding method

Notices:

83-10	Questions and answers relating to the amendment of the limitations on benefits and contributions by TEFRA
87-37	Excise Tax on non-deductible contributions

89-52	Quarterly contributions
90-11	Interest rates for calculating current liability
2001-56	Effective dates for certain amendments made by EGTRRA (only as it applies to the compensation limit)

Revenue Procedures:

87-27	Plan year changes
90-49	Recovery of excess contributions
2000-40	Automatic Approval for Change of Funding Method
2000-41	Change in funding method

Announcements:

96-26 Announces rules for refund to avoid excise tax on non-deductible contributions

Society of Actuaries Study Material

The Society of Actuaries has developed various study notes for the use of students preparing for its examinations on these subjects. These study notes are revised periodically, and new study notes may be added. As of December 31, 2007 the following study notes are available.

Pension Funding Exercises, with Addendum

Variations on Entry Age Normal Cost Methods

Contributory Pension Plans after OBRA '89

A-286

Excerpt on Plan Qualification

Mortality Tables for Pension Plans

Selection of Actuarial Assumptions

Asset Valuation Methods under ERISA

Penalty Taxes Under the U.S. Internal Revenue Code

Commutation Functions

All candidates for the Joint Board examinations, even if not affiliated with the Society of Actuaries, can obtain an order form at www.soa.org by selecting the Basic Education Catalog for the current session and selecting the study note order form. It should be realized, however, that such material was not necessarily drawn up with the particular nature of the Joint Board examinations in mind.

The Society of Actuaries also suggests the following text:

Multi-employer Retirement Plans: Handbook for the 21" Century (2003);
International Foundation of Employee Benefits;
P.O. Box 69, Brookfield, WI 53008

American Society of Pension Professionals and Actuaries Study Material

The American Society of Pension Professionals and Actuaries (ASPPA) suggests the following books. These books, while not designed specifically for the examination, cover much of the syllabus and more.

McGhie, G. N., The Defined Benefit Answer Book (Third Edition), Aspen Publishers; 7201 McKinney Circle; P.O. Box 990; Frederick, MD 21701

Tripodi, Sal L., The ERISA Outline Book, (2007 Edition)

The ERISA Outline Book is available from ASPPA. Information can be found on the ASPPA website at www.asppa.org/resources/res_erisa.htm

Conditions Generally Applicable to All EA-2 (Segment A) Examination Questions

If applicable, the following conditions should be considered a part of the data for each question, unless otherwise stated or implied:

For purposes of this examination, IRS, Treasury and PBGC releases granting disaster relief should be ignored

General Conditions Regarding Plan Provisions

(1) "Plan" or "pension plan" means a defined benefit pension plan.

(2) The plan is qualified under Internal Revenue Code ("IRC") section 401. Thus, for example, any benefit formulas should be understood to be limited by other plan provisions required by the Code.

(3) The plan is sponsored by a single employer; the sponsoring employer is not a member of a controlled group.

(4) The plan is not established or maintained in connection with a collectively bargained agreement.

(5) The plan year, the employer's limitation year, and the employer's tax year are all the calendar year.

(6) The normal retirement age is 65.

(7) Retirement pensions commence at normal retirement age and are paid monthly for life at the beginning of each month.

(8) The plan covers all active employees of the employer; there is no age or service requirement for participation. Thus, when referring to active employees, the terms "employee" and "participant" are synonymous.

(9) There are no, and never have been, mandatory or voluntary employee contributions.

(10) Service for purposes of vesting and benefit accrual is credited on the basis of time elapsed since date of hire.

(11) When the normal retirement benefit is computed as a dollar amount, or as a percentage of compensation, for each year of service, the accrued benefit is defined likewise.

(12) Qualified joint and survivor annuities and any other specified form of payment are provided in such manner that they result in no cost to the employer.

(13) The plan has not been top-heavy in any year.

(14) The plan has not been amended since its effective date.

(15) The adoption date of any plan or amendment is the same as its effective date.

General Conditions Regarding Funding

(16) Any actuarial valuation encompasses not only all active employees but also retired employees, beneficiaries, and former employees entitled to vested deferred pensions.

(17) The valuation date is the first day of the plan year; i.e., participant data, present values, asset values, etc. are as of that date. Also, normal costs are payable annually, the first being due on the valuation date.

(18) Unless otherwise specified, the assumed retirement age is the normal retirement age.

(19) Unless otherwise specified, there are no pre-retirement decrements.

(20) The actuarial cost method, or funding method, is "reasonable" within the meaning of all relevant IRC sections and the regulations thereunder.

(21) Where the normal cost under an actuarial cost method may be computed as either a level percentage of compensation or a level dollar amount, the level percentage approach is used if the plan benefits are based on compensation, and the level dollar approach is used if they are not.

(22) Under the frozen initial method, whenever there is a change in the plan, actuarial assumptions, or asset valuation method, the unfunded liability is adjusted by adding to it the increase (positive

or negative) in the unfunded entry age normal accrued liability due to the change. Likewise, under the attained age normal method, the unfunded liability is adjusted by adding to it the increase in the unfunded unit credit accrued liability.

(23) All funding method changes after 1999 were made in accordance with Rev. Proc. 2000-40. Bases established because of funding method changes prior to 2000 are amortized over 10 years from the date established.

(24) Unless otherwise specified, the unit credit funding method is as defined in Rev. Proc. 2000-40.

(25) Unless otherwise specified, ancillary benefits are funded using the same method as the retirement benefits. They are not funded on a term cost basis.

(26) For purposes of spreading future normal costs under spread-gain methods, the present value of future compensation is not limited by IRC Section 40 1 (a)(l 7).

(27) The terms "value of plan assets", "actuarial value of assets" and "market value of assets" mean the values developed for purposes of IRC section 412, 430, and 431 before being adjusted for items such as the existing credit balance, funding standard carryover balance, prefunding balance, or the outstanding balances of certain bases.

(28) The plan sponsor does not elect to reduce the amount of the funding standard carryover balance for 2008 pursuant to IRC section 430(f)(5) prior to the determination of the value of plan assets for the 2008 plan year or prior to the application of the balance in reducing the minimum required contribution for the 2008 plan year.

(29) The plan sponsor elects to credit all contributions in excess of the minimum required contribution to the prefunding balance.

(30) Where a pre funding or carryover balance exists, the plan was at least 80% funded in the prior year and is therefore eligible to credit the balance(s) against the otherwise-applicable minimum required contribution.

(31) If eligible, the plan sponsor elects to credit the prefunding and carryover balances against the otherwise-applicable minimum required contribution.

(32) All actuarial assumptions are deemed "reasonable" and meet the "best estimate" criterion.

(33) The actuarial cost method, asset valuation method, and actuarial assumptions have not been changed since the plan effective date except as required by PPA.

(34) The term "**minimum required contribution**" means the smallest contribution for a plan year which will prevent a funding deficiency or unpaid minimum for that plan year, without regard to the alternative minimum funding standard account, and **before** reflecting items such as the existing credit balance, funding standard carryover balance, or prefunding balance, as applicable. Amounts to be amortized are not combined or offset against one another.

(35) The term "**smallest amount that satisfies the minimum funding standard**" means the same as "minimum required contribution" **except** that it is determined **after** reflecting items such as the existing credit balance, funding standard carryover balance, or prefunding balance, as applicable. Amounts to be amortized are not combined or offset against one another.

(36) Additional funding charges and additional interest charges due to late quarterly contributions have never applied and there is no liquidity shortfall.

(37) No waivers of funding deficiencies or extensions of amortization periods have been granted.

(38) Unless otherwise specified, the interest rate used for amortizing waivers and for extensions of amortization periods is the same as the valuation interest rate.

(39) The employer is taxable, and all employer contributions for each prior plan year have been deducted by the employer for its tax year coincident with such plan year.

(40) For purposes of determining the deductible limit for any year, the employer does not use (and has never used) the fresh-start alternative and does not combine (and has never combined) amortization bases.

(41) The full funding limitation has never applied.

(42) Expenses are paid directly by the employer, rather than from the assets of the plan, and therefore do not affect the funding of the plan.

(43) Assumed compensation increases first apply to the year immediately following the latest year for which valuation compensation is shown.

(44) The quarterly contribution requirement and the liquidity shortfall shall be disregarded for the purposes of the November, 2008 examination.

(45) The full funding limitations based on current liability shall be disregarded if sufficient information to determine such limitations is not provided.

(46) For purposes of determining the deductible limit, the unfunded current liability shall be disregarded if sufficient information to determine such liability is not provided.

(47) The terms "at-risk funding target" and "at-risk target normal cost" mean the funding target and target normal cost calculated reflecting additional actuarial assumptions and loading factors (if applicable) for an at-risk plan **prior** to the application of any five-year transition as described in IRC Section 430(i)(5).

Miscellaneous General Conditions

(48) All plan provisions and funding calculations comply with all temporary and final regulations under the Internal Revenue Code and ERISA, as amended through June 30, 2008.

(49) The employer has never maintained a defined contribution plan.

(50) Where IRC section 40 1 (a)(17) applies, compensations do not exceed these limits unless sufficient information to apply the limits is provided.

(51) Benefits do not exceed IRC section 415 limits unless sufficient information to apply these limits is provided.

(52) All union plans are collectively bargained and all union employees are subject to collective bargaining.

(53) References to law and regulation section numbers are for clarity and can be assumed to be correct.

If applicable, the preceding conditions should be considered a part of the data for each question, unless otherwise stated or implied.

LIMITS, TABLES AND FORMULAS
(Included with the 2008 EA-2 (Segment A) examination)

[Note: the Limits, Tables and Formulas have been eliminated from this Appendix]

PX29–CAM Benefit Calculation with Offsets Prepared by Actuary David R. Fleiss

Kathy Stewart
CAM Benefit Calculation with Offsets

Benefit Commencement Date	Age	Net CAM Benefit after General Offset[1]	Net CAM Benefit after Special Offset[2]	Net CAM Benefit after Special Offset[3]
04/01/2004	50.9167			1,317.49
04/12/2008	55.0000	617.79		1,969.15
10/19/2008	55.5000	603.43		1,922.84
10/19/2011	58.5000			2,124.45
04/12/2013	60.0000		901.09	2,274.43
10/19/2013	60.5000		530.70	2,158.18
10/19/2016	63.5000		172.96	2,275.21
04/12/2018	65.0000		0.00	2,398.65
10/18/2018	65.5000		0.00	2,204.38

Prepared by: David R. Fleiss, ASA, EA

Date: 6/27/2008

Note 1: Calculated using the actuarial assumptions in the 4/27/2004 Amendment.

Note 2: Calculated using the actuarial assumptions in the 4/27/2004 Amendment.

Note 3: Calculated using the same actuarial assumptions that were used to derive Ms. Stewart's age-65 AMPP annuity benefit from the Defined Lump Sum (4% for the pre-retirement period, 4.5% for the post-retirement period, and an adjusted version of the UP-1984 mortality table).

PX32– Final Denial

Via UPS Next Day Air Tracking # J218 100 396 9

February 26, 2009

Ms. Eva T. Cantarella, Esq.
Attorney for Ms. Kathleen A. Ms. Stewart
Hertz Schram PC
1760 South Telegraph Road
Suite 300
Bloomfield Hills, MI 48302-0183

Re: Appeal of Kathleen A. Stewart for Additional Benefits Under the Nonbargained Program of the AT&T Pension Benefit Plan (the "Plan")

Dear Ms. Cantarella:

In accordance with your written appeal request dated July 11, 2008 and your supplement dated January 7, 2009, please be advised that the Benefit Plan Committee (the "BPC"), pursuant to the provisions of the Nonbargained Program under the AT&T Pension Benefit Plan (the "Plan"), reviewed your appeal submitted on behalf of Kathleen A. Stewart on January 26, 2009. After thoroughly examining the file compiled with respect to the review of the denied claim for benefits, the BPC determined that your appeal for additional pension benefits be denied. The BPC agreed with the administrator's decision that Ms. Stewart is not eligible to receive additional benefits.

The Appeal presents three numbered "claims."

"Claim I" contends that Ms. Stewart's CAM Benefit under the Plan "must be computed without an offset," because any consideration of the lump sum she received from the Ameritech Management Pension Plan (the "AMPP") violates "the Plan's anti-reduction provisions and ERISA's anti-cutback rule." "Claim II" contends that the "Special Offset" provisions in the April 27, 2004 amendment to the Plan (the "Amendment") violate "anti-forfeiture rules," specifically ERISA § 203(a) and Internal Revenue Code ("Code") § 411(a). Id., p. 19. Finally, "Claim III" contends that the "Special Offset" violates "actuarial equivalence rules," specifically ERISA § 204(c)(3) and Code § 411(c)(3). Id., p. 24. The BPC believes this is incorrect and that the applicable Plan terms, properly interpreted, do not violate ERISA or the Code, for two primary reasons.

First, Claim I contends that Ms. Stewart's compensation and years of service used to calculate and pay her lump sum benefit under the AMPP should also be used to calculate her CAM Benefit under the Plan (without compensating for or taking into account the AMPP lump sum), thus resulting in double benefits for her AMPP service and compensation. The BPC finds that the Plan administrator in its Claim response was correct in pointing out that this is contrary to the terms of the Plan both before and after the merger of the AMPP into the Plan on or about December 31, 2004 (the "Merger"). Before the Merger, the Plan specifically and repeatedly stated that Ms. Stewart's service that resulted in her AMPP lump sum could not be considered in her CAM Benefit calculation unless and until the lump sum was repaid. Likewise, before the Merger, the terms of the CAM Benefit

calculation did not include Ms. Stewart's compensation paid by Ameritech. Thus, the BPC has interpreted the Plan's terms as preventing double counting of Ms. Stewart's service and compensation (which would result in paying her a double benefit) before the Merger. After the Merger, the BPC concluded that the AMPP lump sum that Ms. Stewart received years earlier became a benefit paid by the merged Plan (the AMPP thereafter was a part of the Plan). As such, Ms. Stewart's AMPP lump sum satisfied, in part, the CAM Benefit obligation of the Plan. The BPC concluded that the Amendment, which was added to the Plan before the Merger, merely clarified the method of calculating the amount by which Ms. Stewart's AMPP lump sum payment would satisfy the CAM Benefit obligation of the Plan after the Merger.

Second, because Ms. Stewart does not contest the amount of or method of calculating the "General Offset" pursuant to the Amendment, and because the "Special Offset" applies only where it results in a smaller offset (and a larger net payment to participants), the BPC has concluded that Claims II and III are without merit. If the Special Offset can only reduce an offset that Ms. Stewart concedes is lawful and proper (i.e., the actuarial equivalent of the AMPP lump sum), the BPC concluded that it could not cause a "forfeiture" or result in paying less than the "actuarial equivalent" of the CAM Benefit reduced by the lump sum benefit Ms. Stewart has already received.

Ms. Stewart was employed by Ameritech Services, Inc. ("Ameritech") or one of its predecessors from 1971 to 1996. As such, Ms. Stewart was a participant in the

AMPP. Effective July 1, 1996, Ms. Stewart terminated employment with Ameritech and became employed by IBM Global Services ("IBM"). As a result of her termination of employment with Ameritech, Ms. Stewart was offered the choice of receiving a distribution of her accrued benefit under the AMPP either in the form of a lump sum in the amount of $110,450.36, calculated as of July 1, 1996, or in the form of a monthly annuity payable at age 65 in the amount of $2,400.61.[1] Ms. Stewart opted in 1996 to receive this benefit as a lump sum and she was paid.

On or about October 8, 1999, SBC Communications Inc., now known as AT&T Inc. ("AT&T"), acquired Ameritech Corporation, the parent of Ameritech. On or about January 1, 2001, Ameritech became a "Participating Company" in the Plan, as defined by § 2.65 of the Plan's Definitions and Rules for Crediting Service (the "Rules"), pursuant to an amendment adopted on December 21, 2000. However, the AMPP was not merged into or with the Plan until December 31, 2004. AT&T had up to that point consistently merged similar defined benefit plans sponsored by acquired entities into the Plan as soon as practical. However, the Merger of the AMPP and the Plan was delayed until after the expiration of the five year change-in-control period described in Supplement C of the AMPP.

Ms. Stewart first became a "Participant" in the Plan when she was hired by a subsidiary of AT&T on

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[1]The Appeal confirms that Ms. Stewart is not contesting any aspect of the calculation and payment of the AMPP benefit. Appeal, p. 9, fn. 12.

January 31,2001. Thereafter, beginning on June 15, 2002, Ms. Stewart received various estimates of her benefits payable under the Plan. Although Ms. Stewart contests the accuracy of these estimates, Ms. Stewart does not base any particular aspect of her Claim or the Appeal on such estimates or the various communications that followed them. Ms. Stewart does not claim to have reasonably relied on any such communications, nor does she claim that such communications establish or became separate Plan terms. Moreover, Ms. Stewart does not claim or contend that the Plan is bound by any of the estimates or other communications described in or attached to the Claim Letter and/or the Appeal.

Ms. Stewart contends that the Amendment violated ERISA's and the Code's anti-cutback rules and the Plan's "anti-reduction. provisions" (Plan § 4.2.5 and Rules § 3.5) because she contends the Amendment added an offset to the Plan for the first time, thereby reducing benefits that had accrued prior to the Amendment. Ms. Stewart relied upon two primary arguments in this regard. First, there is language in Plan § 4.2.6 and Plan Supplement 12.2 that specifically refers to reductions for benefits payable or paid by a "Prior Bargained Plan," but there is no similar language regarding reductions for benefits paid by the AMPP or other non-bargained plans. Second, estimates provided to Ms. Stewart indicated the plan personnel who created the estimates calculated her CAM Benefit based on Ms. Stewart's Ameritech service and compensation, and then applied a reduction for her AMPP lump sum. Ms. Stewart assumes these estimates were correct when they included her Ameritech service and compensation

in calculating her CAM Benefit, but she contends they are inaccurate and/or incorrect in reducing her benefit to account for the AMPP lump sum she received. Ms. Stewart contends the only Plan terms that permit or support such a reduction were added by the Amendment, and thus the Amendment was an impermissible cutback in her accrued benefit. In several respects, Ms. Stewart incorrectly interprets the Plan.

1. The Terms of the Plan

(a) The Definition of "Pension Compensation"

Ms. Stewart's interpretation of the term Pension Compensation, specifically her conclusion that compensation paid to Ms. Stewart by Ameritech is Pension Compensation before the Merger, is erroneous. As Ms. Stewart herself notes, the term Pension Compensation is defined in relevant part as "a Participant's Actual Base Pay." Rules § 2.672[2]

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[2]The applicable portion of Rules § 2.67 reads as follows:

> Effective prior to January 1, 2000, "Pension Compensation" shall mean the total of a Participant's Basic Compensation, Group Incentive Compensation, Nondiscretionary Incentive Compensation, Bellcore Buy Out, and Rotational Compensation, as applicable, for purposes of calculating the Participant's monthly pension benefit under the Plan.
>
> * * *
>
> Effective January 1, 2001, "Pension Compensation" shall mean the total of a Participant's

(emphasis added). As Ms. Stewart acknowledged in her Claim Letter, she did not become a "Participant" in the Plan until 2001. Thus, Ms. Stewart was not a Participant in the Plan when she received compensation from Ameritech. Although these facts and the resulting interpretation of the term "Pension Compensation" with regard to Ms. Stewart were clearly stated in the Claim Response, the Appeal does not offer any contrary facts or a reasoned basis for a different interpretation.

Rather, Ms. Stewart's Appeal refers to the definition of "Actual Base Pay" as defined in Plan § 2.1,[3] and Ms. Stewart also notes that Ameritech is

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(a) Actual Base Pay,
(b) Group Incentive Compensation,
(c) Nondiscretionary Incentive Compensation,
(d) Individual Discretionary Awards payable on or after January 1, 2000,
(e) Special Contribution Awards payable on or after January 1, 2001, and
(f) The individual component of the Ameritech Team Bonus Plan payable on or after January 1,2001, pursuant to the Ameritech Management Incentive Plan

[3] The applicable portion Plan § 2.1 reads as follows:

Except when the context clearly indicates otherwise, the definitions immediately below and in the SBCPBP - Nonbargained Program Definitions and Rules for Crediting Service (incorporated herein by reference) are applicable within the Nonbargained Program.

"Actual Base Pay" shall have the following meaning:

(i) For Employees of SNET Companies, "Actual Base Pay" shall mean a Participant's compensation

listed as a "Participating Company" in the Plan as of January 1, 2001 when she was hired by AT&T. Ms. Stewart then concludes that her Ameritech compensation is within the definition of "Actual Base Pay," and thus, "Pension Compensation." Appeal, p. 3.

However, "Actual Base Pay" is defined as "a **Participant's** compensation that has actually been paid out by a Participating Company on such **Participant's** behalf ... " Plan § 2.1 (emphasis added). As noted above, before the Merger, Ms. Stewart was not a Participant while employed with Ameritech. Likewise, Ameritech was not a Participating Company when Ms. Stewart was employed there. Thus, Ms. Stewart's compensation from Ameritech was not "a Participant's compensation" as the BPC interprets this section of the Plan. Moreover, under the BPC's interpretation of the Plan § 2.1, the BPC concludes

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that has actually been paid out by a Participating Company on such Participant's behalf and that has been identified by such Participating Company as base pay. For a Participant on short term disability, Actual Base Pay shall be the amount of payment such Participant is entitled to under any short term disability plan which covers such Participant as an employee of a Participating Company determined before reductions for workers' compensation, social security disability payments, and other payments made under law.

(ii) For Employees of all other Participating Companies, "Actual Base Pay" shall mean a Participant's compensation that has actually been paid out by a Participating Company on such Participant's behalf and that has been identified by such Participating Company as base pay.

that Ms. Stewart's Ameritech compensation was not "paid out by a Participating Company," since Ameritech was not a Participating Company when it paid compensation to Ms. Stewart.

As explained in the Claim denial, these interpretations as they relate to Ms. Stewart necessarily changed as a result of the merger of the Plan and the AMPP at the conclusion of 2004. After the Merger, Ms. Stewart's status as a participant in the AMPP became status as a Participant in the Plan. Thus, after and because of the Merger, the BPC interprets the Plan as providing that Ms. Stewart's compensation from Ameritech was Participant Compensation, but not before.

Although the Appeal discusses how Ms. Stewart's Ameritech compensation should be computed under the CAM Income definition, and specifically focuses on Plan § 4.2.2(b) regarding her compensation for purposes of the CAM Averaging Period, these issues are irrelevant to the Appeal because Ms. Stewart does not challenge the calculation of her CAM Benefit after the Merger.[4] Appeal, p. 4.

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[4]The BPC notes, however, that Ms. Stewart claims "only a limited portion of Ms. Stewart's Ameritech compensation is used to compute her CAM Benefit because of Plan § 4.2.2(b)," and that this Plan provision "served to artificially freeze Ms. Stewart's compensation at her pre-1995 rate of pay for most of the 5-year CAM Averaging Period." These statements/ interpretations are erroneous. Ms. Stewart ignores the fact that she was not working for either AT&T or Ameritech during much of this averaging period, so naturally this impacts her calculation of benefits. Plan § 4.2.2(b) merely uses an alternative rate of compensation for participants, such as Ms. Stewart, who did not work for AT&T (or Ameritech) during the entire averaging period. The fact that this

However, the Appeal is inaccurate in stating that the Claim denial "spends little time disputing that the limited Ameritech *compensation* should be included in Ms. Stewart's Pension Compensation." Id. (emphasis in original). Indeed, while the quantity of text devoted to this issue is irrelevant, the Claim denial clearly articulated the interpretation of "Pension Compensation" described above. Claim Response, pp. 5-6. The BPC agrees with this interpretation. Moreover, this interpretation alone is sufficient to deny Ms. Stewart's Claim I in this Appeal because the CAM Income formula is based on the amount of "Pension Compensation" times the years of "Pension Calculation Service" for periods prior to Ms. Stewart's employment with AT&T in 2001. If the amount of Pension Compensation is zero, as the BPC interprets it is for Ms. Stewart, the number of years included in her Pension Calculation Service is irrelevant. In any event, as discussed below, prior to the Merger, the BPC' s interpretation of the applicable Plan terms is that Ms. Stewart was likewise not entitled to Pension Calculation Service for her years of employment before she joined AT&T.

(b) The definition of "Pension Calculation

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alternative was not the highest rate of compensation ever earned by Ms. Stewart during the averaging period (which was shortened for her by her IBM Global employment) does not, in fact, result in using a "limited portion of Ms. Stewart's Ameritech compensation" in calculating her CAM Benefit. It strikes a balance, applicable to all similarly situated participants, between giving such participants their highest rate of pay (as an average) and something less. The BPC believes choosing the rate of pay before the period begins is both fair and appropriate. However, regardless of fairness, this is the design chosen by the Plan Sponsor and included in the text of the Plan.

Service"

In the section of the Appeal devoted to interpreting the Plan, Ms. Stewart consistently ignores relevant provisions of the Plan that apply to her with regard to her Pension Calculation Service.

(i) Rules § 2.66.1

First, Ms. Stewart's Appeal quotes Rules § 2.66.1,[5] the definition of Pension Calculation Service, and concludes that "Ms. Stewart's Pension Calculation Service includes her period of employment with Ameritech (either as a Participating Company or as an Interchange Company) ... ". Appeal, p. 4. However, in this section of the Appeal, Ms. Stewart ignores Rules § 2.66.5. As discussed in the Claim Response, Rules § 2.66.5 expressly modifies Rules § 2.66.1 as follows:

Notwithstanding any other provision of the Plan,

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[5]Rule § 2.66.1 reads in its entirety as follows:

"Pension Calculation Service" shall mean an Eligible Employee's period of employment with one or more (a) Participating Companies, (b) Interchange Companies (if an Interchange Agreement requires the Plan to recognize the Eligible Employee's service with an Interchange Company for pension calculation purposes when be becomes an Eligible Employee), and (c) effective January 1, 1994, Bell Communications Research, Inc. during a Rotational Assignment; provided, however, Pension Calculation Service shall not include any period of service for pension calculation purposes while covered under a Prior Bargained Plan to the extent that the amount of the monthly pension benefit under such Prior Bargained Plan is an element in the computation of the Participant's monthly pension benefit under the Plan in accordance with the provisions of Paragraph 4.2.3 of the Plan.

> "Pension Calculation Service" shall not include a Covered Employee's period of employment in the service of one or more MPA Interchange Companies that would otherwise be subject to recognition by the Plan in accordance with the provisions of the Mandatory Portability Agreement or any other provision of the Plan, if the Covered Employee has received a lump sum distribution of his pension benefit from an MPA Interchange Company Pension Plan attributable to such period of employment and the Eligible Employee has not repaid the lump sum distribution to such MPA Interchange Company Pension Plan.

The Appeal "stipulates" that Ms. Stewart was a Covered Employee while at Ameritech, and that the AMPP was an MPA Interchange Company Pension Plan. Appeal, p. 14. Thus, under the BPC's interpretation of the plain language of Rules § 2.66.5, Ms. Stewart's lump sum from the AMPP precludes her years at Ameritech constituting "Pension Calculation Service."

(ii) Plan § 4.2.4

The Appeal next contends that Plan § 4.2.4, "Coverage Under a Predecessor Plan," requires recognition of Ms. Stewart's years of service at Ameritech as Pension Calculation Service. This section reads as follows:

> The monthly pension benefit of a Participant who had accrued monthly pension benefits under a Predecessor Plan prior to April 1, 1981, shall be determined under the provisions of the Plan based

> on all of the Participant's service for pension eligibility and pension calculation purposes under the Plan and the Predecessor Plan; provided, however, that in no event shall his monthly pension benefit be less than his monthly pension benefit determined under the provisions of Paragraph 4.2.4 of the Plan as in effect on April 1, 1989.

The Appeal further states that the term "Predecessor Plan" is "defined to include the Bell System Management Plan ("BSMP") whose name subsequently changed to the Ameritech Management Pension Plan (i.e., the AMPP)." Appeal, p. 5. The BPC believes this interpretation of Plan § 4.2.4 and the term "Predecessor Plan" is erroneous, as is the factual assertion that the BSMP changed its name to the AMPP.

The term "Predecessor Plan" is defined in Rules § 2.76.1, which the Appeal does not quote or discuss:

> "Predecessor Plan" shall mean the SBC Management Pension Plan as such plan existed from time to time prior to May 1, 1992, or the Bell System Management Pension Plan as such plan existed from time to time prior to January 1, 1984, as applicable.

On its face, this definition excludes the AMPP, until it was merged with the Plan. What constitutes a "Predecessor" to the Plan is clear - it begins with the SBC Management Pension Plan (prior to May 1, 1992), and then includes the BSMP, but only as it existed prior to January 1, 1984. The BPC does not agree that

the AMPP was a "Predecessor Plan" within the meaning of this definition prior to the Merger, and indeed, Ms. Stewart does not address this definition or explain her interpretation in any way.

The BPC also notes that the BSMP did not, in fact, change its name to the AMPP. Rather, as Ms. Stewart acknowledges in footnote 3 of her Appeal, AT&T was divided into several Regional Bell Operating Companies ("RBOC"s), including Ameritech and SBC. Thus, the BSMP may have been a predecessor to both the SBC Management Pension Plan and the AMPP, but it did not merely change its name from the BSMP to the AMPP. In any event, the BPC interprets the definition of Predecessor Plans set forth in Rules § 2.76.1 to exclude the AMPP as described above.

Finally, the BPC concludes that the terms of Plan § 4.2.4 also contradict Ms. Stewart's interpretation. This section clearly states that the benefits are to be "determined under the provisions of the Plan ... " As just explained, the provisions of the Plan state clearly that Ms. Stewart is not entitled to Pension Calculation Service for her years at Ameritech because she received a lump sum for such service that has not been repaid. Rules § 2.66.5.

(iii) Rules § 2.68.8

The Appeal next refers to Rules § 2.68.8 and claims that it requires recognition of Ms. Stewart's service at Ameritech. This section of the Rules provides as follows:

Effective October 8, 1999, all former and current

> employee service with any entity that would be recognized under the Ameritech Management Pension Plan, the Ameritech Pension Plan, or a predecessor plan shall be treated as if such service had always been service within the SBC Controlled Group of Corporations, subject to otherwise applicable provisions of the Nonbargained Program governing the recognition of such service.

After quoting this section of the Rules, the Appeal notes that Ms. Stewart's Ameritech service was recognized in calculating her lump sum. The Appeal then concludes its interpretation of Rules § 2.68.8 by claiming without explanation or support that "no provision of the "Non-Bargained program" (i.e., Plan) excludes such service." Appeal, p. 6.

This last statement is erroneous and untrue. As pointed out in the Claim Response, there are three different sections in the Plan that specifically exclude recognition of Ms. Stewart's Ameritech service because she took a lump sum based on such service and has not repaid that lump sum. Specifically, Rules §§ 2.66.5, 6.1.4(c) and 3.3 expressly provide that service for purposes of calculating the CAM Benefit "shall not" include service that was recognized and used to calculate a benefit that was paid in a lump sum that has not been repaid to the Plan. Rules § 2.68.8 contains a caveat to its otherwise broad language that Ms. Stewart's Appeal effectively ignores: "subject to otherwise applicable provisions of the Nonbargained Program governing the recognition of such service." In the BPC's view, Rules §§ 2.66.5, 6.1.4(c) and 3.3 are clearly "applicable provisions of the Nonbargained

Program governing the recognition of such service," and they plainly exclude Ms. Stewart's Ameritech service from being used to calculate her Plan benefit prior to the Merger.

(iv) Rules § 6.1

Next, the Appeal refers to and relies on Rules § 6.1, but ignores the applicable limiting provisions of Rules § 6.1.4(c). After quoting Rules § 6.1.1(a) and 6.1.1(b)(1) and (2),[6] the Appeal concludes by stating

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[6]These sections of the Rules read as follows:

Section 6. Mandatory Portability Agreement Provisions

Notwithstanding any other provisions hereof, the computation of Pension Eligibility Service, Pension Calculation Service, Year of Participation Service and Years of Vesting Service of a Covered Employee shall be governed by the provisions of this Section 6.

6.1 Recognition of Service Credit

6.1.1 Under Former MPA Interchange Company Pension Plan

6.1.1(a) Service Under Former MPA Interchange Company Pension Plan

For purposes of determining an Employee's Years of Participation Service, Years of Vesting Service, Pension Eligibility Service and Pension Calculation Service, the Plan shall allow full credit for and grant recognition of a Covered Employee's Pension Service Credit and MPA Years of Service as recognized under the Former MPA Interchange Company Pension Plan in which the Covered Employee last previously was a participant

6.1.1(b) Recognition of Service Under Former MPA Interchange Company Pension Plan

that the AMPP recognized Ms. Stewart's Ameritech service. However, the Appeal ignores the terms of Rules § 6.1.4(c), which clearly limits the terms of Rules §§ 6.1.1(a) and 6. 1.1 (b)(1) and (2) as follows:

> If any Covered Employee is employed by an SBC MPA Company after terminating employment with an MPA Interchange Company (other than an SBC MPA Company) and subsequent to receipt of a lump sum distribution of his accumulated plan benefit under such MPA Interchange Company's MPA Interchange Company Pension Plan, the portion of such Covered Employee's Pension Service Credit constituting benefit accrual service shall not be recognized under the Plan unless and until such Covered Employee repays such lump sum distribution to such MPA Interchange Compensation Pension Plan in accordance with the terms and conditions of and within the time

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6. 1.1(b)(l) The provisions of Paragraph 6 1.1(a) above shall apply whether or not such Covered Employee described therein incurred a One-Year Break in Service or other break in service between the time such Covered Employee terminated employment with or retired from the Former MPA Interchange Company and the time such Covered Employee commenced employment with an SBC MPA Company.

6.1.1(b)(2) For purposes of determining a Covered Employee's Pension Calculation Service and Years of Vesting Service hereunder, there shall be counted only the Pension Service Credit and MPA Years of Service under and recognized by the Former MPA Interchange Company Pension Plan, as of the last date such Covered Employee was a participant in such plan, Or such Pension Service Credit and MPA Years of Service which would have been recognized by such plan had the Covered Employee remained an active participant under the Former MPA Interchange Company Pension Plan during the period such Covered Employee is a Participant.

> period provided in such plan and the pension obligation and the assets associated with such repayment have been transferred to the SBC Pension Benefit Plan and the Pension Fund.

On its face, Rules § 6.1.4(c) excludes and prevents recognition of Ms. Stewart's Ameritech service "unless and until" Ms. Stewart repays her lump sum paid by the AMPP.

These are the only sections of the Plan and Rules referred to in the Appeal for the purpose of arguing that the Plan requires recognition of Ms. Stewart's service while employed by Ameritech. As explained above, under the BPC's interpretation of the applicable Plan terms, no terms of the Plan require or even permit recognition of Ms. Stewart's Ameritech service because she already received a lump sum benefit for such service and has not repaid it.

(c) "Prior Bargained Plan Reduction" - Supplement 12.2 and Plan § 4.2.6

The only other language of the Plan that Ms. Stewart's Appeal refers to and relies upon in support of Claim I are specific references in Supplement 12.2 and Plan § 4.2.6 to reductions related to benefits paid by or payable under a "Prior Bargained Plan."[7]

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[7]Plan § 4.2.6 reads in its entirety as follows:

> **4.2.6 Pension Benefits Under Other Plans**
>
> A Participant's monthly pension benefit determined under this Subsection 4.2 shall be reduced by his monthly pension benefit under a Prior Bargained Plan

Specifically, the Appeal contends that the absence of similar language related to the AMPP (a non-bargained plan) means there can be no reduction or "offset" for Ms. Stewart's lump sum paid by the AMPP. Appeal, p. 5.

As an initial matter, the BPC notes that this argument is not based on any Plan language that would actually require use of Ms. Stewart's AMPP service or compensation in calculating her Plan benefit prior to the Merger, and for the reasons just described, the BPC has concluded that no such terms exist. The

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to the extent that his benefit under the Prior Bargained Plan is based upon any period of service for pension calculation purposes that is recognized as Pension Calculation Service under the Plan.

Supplement 12.2 reads in its entirety as follows:

S 12.2. Updated Career Average Minimum Benefit

The Updated Career Average Minimum Benefit as of a CAM Participant's Normal Retirement Age shall be 1.6% times CAM Income divided by twelve (12), payable as a single life annuity.

A Participant's Updated Career Average Minimum Benefit shall be reduced for benefits payable from a Prior Bargained Plan as specified by the Nonbargained Program Section 4.2.6.

If a CAM Participant has satisfied the Modified Rule of 75 at his Termination of Employment and commences payment before his Normal Retirement Age, the Early Retirement Discounts of Section 4.1.1(b) of the Nonbargained Program shall be applied. If a CAM Participant has not satisfied the Modified Rule of 75 at his Termination of Employment and elects to commence payment before his Normal Retirement Age, the Early Commencement factors of Section 4.1.2(b) of the Nonbargained Program shall be applied.

fact that the Plan has terms relating solely to reductions for Prior Bargained Plans does not necessarily mean that there are no terms that prevent double payment or accrual of benefits already paid by other non-bargained plans, such as the AMPP. Under the BPC' s interpretation, the three Rules identified above, §§ 2.66.5, 6.1.4(c) and 3.3 all clearly manifest the plan sponsor's intent to avoid paying plan benefits twice for the same service.

Moreover, as discussed above, the consistent practice of AT&T over the years was to merge similar non-bargained benefit plans of acquired entities with the Plan. The BPC concludes that the plan sponsor intended to, and did, merge the AMPP and the Plan as soon as possible following the conclusion of a 5 year period after acquisition of Ameritech. See AMPP Supplement C. Once merged, the Plan and the AMPP were obligated to pay a single benefit, and the BPC concludes that payment of the lump sum necessarily and automatically served to satisfy that benefit obligation. Thus, under the BPC's interpretation, there was no need to have reduction language with regard to nonbargained plans like that pertaining to a Prior Bargained Plan in Supplement 12.2 and Plan § 4.2.6, because non-bargained plans would not remain separate and distinct plans like a Prior Bargained Plan.[8] This explains why Supplement 12 and Plan §

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[8]During the period of time that the AMPP was a separate plan, under the BPC's interpretation, Rules §§ 2.66.5, 6.1.4(c) and 3.3 prevented double counting service, and Rules § 2.67 and Plan § 2.1 prevented double counting compensation. Thus, there was no need for similar non-bargained plan language with regard to reductions for payment of benefits from separate non-bargained plans (such as the AMPP) prior to their merger with the Plan.

4.2.6 refer only to Prior Bargained Plans.

When Ms. Stewart and similarly situated employees questioned the Plan's practice of treating the prior lump sum paid by the AMPP as partial satisfaction of the Plan's benefit obligation, the Amendment was adopted in order to confirm and clarify existing administrative practice and Plan terms.

Moreover, since the Amendment was adopted prior to the merger of the AMPP and the Plan, the BPC concludes that it did not actually cutback or reduce Ms. Stewart's accrued benefit under the Plan in any way. As described above, under the BPC's interpretation, the terms of the Plan did not give Ms. Stewart Pension Compensation or Pension Calculation Service for her time at Ameritech before the Merger. Under the BPC's interpretation, the Amendment could not take away benefits based on Ms. Stewart's years at Ameritech because the Plan terms did not provide her any such benefits prior to the Merger. Thus, under the BPC's interpretation the Amendment did not constitute or cause a cutback of Ms. Stewart's accrued benefit as provided by the Plan at the time it was adopted.

2. Ms. Stewart's Benefit Estimates

Perhaps because the terms of the pre-Merger Plan did not provide Ms. Stewart Pension Compensation and/or Pension Calculation Service based on her years at Ameritech, the Appeal relies also on the benefit estimates provided to Ms. Stewart before the Merger as evidence in support of her Appeal. On p. 7, the

Appeal notes that these estimates "did include Ms. Stewart's service with Ameritech when it computed her estimated CAM Benefits." The BPC concludes, however, that these estimates do not support or require it to grant Ms. Stewart's Appeal.

As an initial matter, Ms. Stewart does not contend that the estimates themselves entitle her to a higher, unreduced benefit. Rather, Ms. Stewart contends that the estimates are consistent with her interpretation of the Plan (specifically the sections discussed above) as requiring recognition of her Ameritech service before the Merger. Under the BPC's interpretations of the Plan terms described above, however, such terms do not, in fact, require such recognition. Moreover, the estimates are consistent with an assumption that the AMPP and the Plan would be merged before Ms. Stewart's benefits were paid. Under the Plan post-Merger, Ms. Stewart's Ameritech compensation and service are used to calculate her CAM Benefit, but the AMPP lump sum also partially satisfies the Plan's CAM Benefit obligation. This is entirely consistent with the benefit estimates and specifically the estimates' reduction for the AMPP lump sum Ms. Stewart had already received.

Moreover, even if the benefit estimates were simply erroneous or based on a misinterpretation of the Plan, they would not require or lead the BPC to a different result. As noted in the Claim Response, Ms. Stewart is not contending that the estimates themselves overrule Plan terms or establish an independent basis for her benefits. She does not contend, even in her Appeal, that she relied upon these estimates to her detriment. Indeed, she could not do so

since each of the estimates reduced her benefit obligation by the amount of the lump sum she had been paid by the AMPP. Thus, both the terms of the Plan as the BPC interprets them above and the benefit estimates result in the same conclusion - (1) a post-Merger benefit reduced by the lump sum Ms. Stewart has received, or (2) a pre-Merger a benefit calculated solely on Ms. Stewart's compensation and service at AT&T. Therefore, Claim I should be and is denied.

3. The Appeal's Reply to the Claim Response

Beginning on page 12 of the Appeal, Ms. Stewart provides various arguments in reply to the Claim Response that denied Claim I. Each of these arguments is addressed below in the order they appear in the Appeal.

(a) Plan Terms

First, the Appeal simply repeats the assertion that Ms. Stewart's service at Ameritech had to be recognized under Rules §§ 2.66.1, 2.68.8, 6.1 and Section 4.2.4 and Supplement 12.2 of the Plan. She also repeats the observation that her benefit estimates calculated her CAM Benefit using her Ameritech service and that the estimates confirm the plan administrator interpreted these Plan terms as she does. The above discussion fully responds to these arguments.

(b) More Benefits for Participants Who Left Ameritech and the Plan Sponsor's Intent

The Appeal next contends that if her Appeal is

granted, Ms. Stewart would not get more benefits than a similar former Ameritech participant who never left (i.e., someone who did not get outsourced to IBM Global). In support of this contention, Ms. Stewart offers three arguments: (1) a former Ameritech employee who never terminated would have greater CAM Income (a higher salary due to increases) for the 5-year CAM Averaging period; (2) such an employee would have the additional years of compensation Ms. Stewart missed while at IBM; and (3) such an employee would have the years of service Ms. Stewart missed while at IBM. Appeal, pp. 12-13.

As an initial matter, and as the Appeal admits, "whether Ms. Stewart's CAM Benefit would be greater than that of an Ameritech employee who never terminated is irrelevant. ..." Id. p. 13. Apparently, Ms. Stewart misconstrues the point made in the Claim Response that she is effectively seeking double benefits for her Ameritech service and compensation. See Claim Response, p. 3. If Ms. Stewart's CAM Benefit is calculated using her Ameritech compensation and service, and there is no reduction for the AMPP lump sum she received based on this compensation and service, she will effectively be paid twice and receive a double benefit for her years at Ameritech. Obviously, this would result in Ms. Stewart receiving more than a fellow employee who never terminated, regardless of minor differences in the CAM Benefit calculation, because she would be getting double benefits for her years at Ameritech.

Moreover, in the BPC's view, the point of the Claim Response in this regard noting that her receipt of double benefits would result in her receiving more

than her peers who did not leave Ameritech - was merely to clarify the nature of her claim with reference to the plan sponsor's intent as set forth in the Plan terms. The Claim Response relied upon Plan terms in determining there was no evidence of an intent to pay double benefits for the same service and compensation. Indeed, in Rules §§ 2.66.5, 6.1.4(c) and 3.3, the Claim Response found terms to the contrary, and the BPC interprets these Plan terms in the same way. The Claim Response does not rely on any "unwritten intent" of the plan sponsor, but rather relied on terms specifically designed to avoid paying double benefits for the same compensation and service to participants, like Ms. Stewart, who received and still retain lump sums based on such compensation and service.

(c) The Amendment

The Appeal next contends that the Claim Response "is based on the 4/27/04 Amendment, which is illegal because it causes an impermissible reduction in the benefit already accrued." Appeal, p. 13. This is simply not true.

The Claim Response spends nearly five pages describing and interpreting the terms of the Plan prior to the Amendment and the Merger, specifically concluding that under those terms, Ms. Stewart's compensation and service at Ameritech were excluded from her CAM Benefit calculation until the Merger. The Claim Response does not rely on the Amendment as the basis for its rejection of Ms. Stewart's Claim, or the calculation of her CAM Benefit. Neither does the BPC. Instead, the Claim Response merely notes that the Amendment did not change or reduce Ms.

Stewart's CAM Benefit that was accrued under the Plan as of April 27, 2004, because the Plan and the AMPP were not merged as of that date. The BPC agrees with this interpretation of the Plan. The Claim Response concluded that the Amendment merely clarified the method of calculating the amount by which Ms. Stewart's AMPP lump sum satisfied her CAM Benefit obligation, once the Plan and the AMPP were merged, and again, the BPC agrees with this interpretation and conclusion.

(d) Rules § 2.66.5

Ms. Stewart next contends that Rules § 2.66.5 is "void" for two reasons. First, Ms. Stewart claims Rules § 2.66.5 is void under § 559 of the Tax Reform Act of 1984 (the "TRA"). Specifically, Ms. Stewart argues that the TRA "extended indefinitely" the terms of the Divestiture Interchange Agreement (the "DIA"), and that the DIA would have required recognition of Ms. Stewart's Ameritech service upon her rehiring by AT&T. Second, Ms. Stewart contends that Rules § 2.66.5 is void because she cannot repay her AMPP lump sum. In the BPC's view, neither of these arguments is correct.

(i) The TRA and the DIA

The DIA was entered January 1, 1984 by AT&T and the RBOCs as part of the court-ordered break up and reorganization of AT&T. In essence, it established a system of transferring pension assets from one RBOC's pension plan to another when employees transferred from one RBOC to another. Specifically, the DIA required both the recognition of prior service

and the transfer of assets from a prior RBOC employer's pension plan (referred to in the DIA and herein as the "Transferor Interchange Company Pension Plan") to the new RBOC employer's pension plan (referred to in the DIA and herein as the "Transferee Interchange Company Pension Plan"). See DIA Articles II and III. The DIA established a process and procedure for valuing the benefit obligation owed by the Transferor Interchange Company Pension Plan to the transferring employee based on the employee's service, and transferring assets from the Transferor Interchange Company Pension Plan to the Transferee Interchange Company Pension Plan to pay for that benefit obligation. Under these circumstances, the DIA required the Transferee Interchange Company Pension Plan to provide the same service credit to the transferring employee that was used to calculate the benefit obligation and assets that were being transferred as well. Id.

The terms of the DIA specifically limit the service credits that would be provided to the transferred employee by the Transferee Interchange Company Pension Plan to those "recognized" by the Transferor Interchange Company Pension Plan as of the last date the employee was a participant in such plan. See DIA § 2.1(a). This service credit was then used to calculate the benefit obligation owed by the Transferor Interchange Company Pension Plan to the employee (DIA § 3.1), and then assets sufficient to pay this accumulated benefit obligation were required to be transferred to the Transferee Interchange Company Pension Plan. (DIA § 3.2). In this way, the granting of service credit was specifically tied to the transfers of assets from Transferor Interchange Company Pension

Plan to Transferee Interchange Company Pension Plan consistent with the DIA terms and procedures.

Here, of course, the AMPP would no longer "recognize" and grant Ms. Stewart service credit as of the last date she was a participant in that plan because she received her AMPP lump sum based on such credit. As of Ms. Stewart's receipt of her AMPP lump sum, the assets that the DIA contemplates being transferred from the AMPP to the Plan had been given to Ms. Stewart. Ms. Stewart does not dispute that her lump sum satisfied the AMPP's benefit obligation to her based on her service at Ameritech. Appeal, p. 9, footnote 12. On the date she was hired by AT&T, the BPC does not believe the AMPP recognized or owed her any service credit toward a benefit obligation under the AMPP - it had been fully paid and satisfied by the lump sum. Thus, under the DIA, the Transferor Interchange Company Pension Plan (the AMPP) would not have any service credit, or assets, to transfer to the Transferee Interchange Company Pension Plan (the Plan).

In addition to these defects in Ms. Stewart's argument,[9] we note she has not provided any support

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[9]As posed, Ms. Stewart's argument with regard to the DIA and the TRA would have absurd results. Ms. Stewart's Appeal contends that the TRA effectively locked in a requirement of providing service credits, regardless of the payment of benefits based on such credits, and that the RBOCs could not design their plans in such a way to avoid paying duplicative benefits under circumstances where an employee received benefits from the prior plan based on such service. Indeed, if Employee A worked for RBOC A for thirty years, retired, received benefits from RBOC A's plan, and then began working for RBOC B, Ms. Stewart's Appeal would contend that there is no way RBOC B could avoid giving

for her contention that the TRA can or does, in fact, "void" the terms of the Plan. The TRA on its face only requires that "the recognition of service credit, **and enforcement of such recognition**, shall be governed **in the same manner and to the same extent as provided under the divestiture interchange agreement** for a change of employment by a covered employee during calendar year 1984." TRA §§ 559(a) (emphasis added). There is not a private right of action created by the TRA, and indeed Ms. Stewart does not contend or claim to be pursuing any such action. To the contrary, the DIA expressly provides with regard to enforcement that it does not "provide third parties, including any covered employee, with any remedy, cause, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement." DIA § 9.9. It also provides: "Nothing in this Agreement shall be construed as giving to any employee, former employee or any other individual ... any right or entitlement under any employee benefit plan maintained by an Interchange Company except as expressly provided in such plan." Id. The TRA as noted above is expressly limited by the enforcement mechanisms contained in

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double credit and paying a double benefit. Any plan terms to the contrary would be "void." If, one day later, Employee A then left RBOC B and returned to work at RBOC A, then (under Ms. Stewart's interpretation) RBOC A's plan would have to recognize such service again. Employee A could retire the next day and receive the same benefit three times. There is no term of the DIA or the TRA that supports an intent to mandate such a result. To the contrary, the DIA and the TRA were designed to encourage and facilitate employee transfers, and to avoid employees losing benefits as a result of such transfers. In the BPC's view, forcing the payment of double or even triple benefits would be contrary to this intent.

the DIA.

In sum, Ms. Stewart contends that the effect of the DIA and the TRA was to lock in service credit from a Transferor Interchange Company Pension Plan pension plan under any and all circumstances, and to require double counting of such credit where an employee received a lump sum from a Transferor Interchange Company Pension Plan. Ms. Stewart argues that there is no way to avoid such an impact, and that it is mandated by the DIA and the TRA, despite their terms to the contrary.[10] The BPC believes, the plain language of the statute and the agreement clearly prevent this result. As a result, the BPC concludes that Rules § 2.66.5 is not "void" as Ms. Stewart contends, but rather is consistent with the TRA and the DIA.[11]

(ii) Repayment of Lump Sum Impossible

As mentioned above, Ms. Stewart next argues that Rules § 2.66.5 is also "void" because repayment of her AMPP lump sum is "impossible." However, whether Ms. Stewart can repay her lump sum is irrelevant under the terms of Rules § 2.66.5. The only issue under

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[10]By limiting the credits and transfers of assets to what the Transferor plan would "recognize," the DIA effectively limited its mandate to what was owed by the Transferor plan in the way of credit and any resulting benefit obligation.

[11]Finally, the BPC notes that even if Rules § 2.66.5 could be deemed inconsistent with the DIA and the TRA prior to the Merger, the Merger corrected and resolved any such inconsistency. After the Merger, as discussed above, Ms. Stewart's service at Ameritech is used to calculate her CAM Benefit, which is what Ms. Stewart contends the DIA and the TRA require.

that Rule is whether Ms. Stewart has repaid her lump sum. The language of the Rule is clear - "Pension Calculation Service" does not include Ms. Stewart's Ameritech service if she received a lump sum and "has not repaid the lump sum." Rules § 2.66.5. The BPC notes also that Rules § 2.66.5 does not make any promise or guarantee concerning the right to repay the lump sum at issue. Because the Rule does not contain any language limiting its effect or making it "void" where repayment is impossible, Ms. Stewart's position lacks any support, and the BPC concludes it is without merit. The BPC notes that some participants, under some circumstances, may be able to repay their lump sums. Ms. Stewart cannot. However, the purpose of Rules § 2.66.5 is to prevent the double payment of benefits. If a participant can and does repay the lump sum, then it would make no sense to continue to ignore the service that gave rise to that lump sum. On the other hand, where a participant has not repaid the lump sum, regardless of the reason (including because repayment is impossible) it is logical to avoid double payment of the benefit, and Rules § 2.66.5 does so.

Having responded to all of the Appeal's arguments regarding Rules § 2.66.5 in full, there is no need to also respond to the Appeal's arguments regarding Rules §§ 6.1.4(c) or 3.3.[12] These were discussed in the Claim

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[12]The BPC also notes that even if Ms. Stewart was correct and the TRA and DIA required recognition of Ms. Stewart's service at Ameritech, or if the impossibility of repaying the lump sum made Rules § 2.66.5 somehow "void," the BPC still would not grant Claim 1. As mentioned above, the CAM Benefit formula involves multiplying years of service credit by Pension Compensation. Since Ms. Stewart had no Pension Compensation within the meaning of Rules § 2.67 (see pp. 10-14, above), any service credit

Response only as further proof and confirmation of the Plan Sponsor's intent, as expressed in these additional Plan terms, not to pay a double benefit or to double-count prior service in circumstances where that service was used to calculate a lump sum that was not repaid. Ms. Stewart's Appeal does not contend that Rules § 2.66.5 is inapplicable to her (just that it is "void"), or that Rules §§ 6.1.4(c) or 3.3 are necessary to properly calculate her pension benefit. However, because these additional Rules were discussed in the Claim Response and are likewise discussed in Ms. Stewart's Appeal, the BPC will address them here as well.

(e) Rules § 6.1.4(c)

Ms. Stewart's Appeal merely repeats the same arguments applicable to Rules § 2.66.5 with regard to Rules § 6.1.4(c) - namely, that Rules § 6.1.4(c) is void under the TRA and the DIA and because she cannot repay her lump sum. Appeal, pp. 16-17. As such, the same responses to these arguments described above apply equally to Rules § 6.1.4(c).

(f) Rules § 3.3

Ms. Stewart's argument is slightly different with regard to Rules § 3.3.[13] Appeal, pp. 17-18. In essence,

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mandated by the DIA and TRA, or Rules § 2.66.1 in the absence of § 2.66.5, would not result in CAM Income or Ms. Stewart earning a CAM Benefit for her years at Ameritech.

[13]Rules § 3.3 read in its entirety as follows:

3.3 Service Under a Former Affiliate Plan

Ms. Stewart relies on language limiting the effect of Rules § 3.3, making it "subject to the provisions of any applicable Interchange Agreement." The Appeal then argues that the Mandatory Portability Agreement (the "MPA") is an "applicable Interchange Agreement" within the meaning of Rules § 3.3. The Appeal then contends that the MPA requires recognition of Ms. Stewart's Ameritech service, even if that results in double counting her service and paying a double benefit based on such service. Id.

The BPC does not believe the MPA requires this result any more than the DIA and the TRA. Indeed, as Ms. Stewart recognizes, the terms and structure of the MPA are designed to perpetuate the rules and process set up in the DIA for making benefits portable between the RBOCs and their related companies. Id. More specifically, the MPA states that it "is intended to assure compliance with the provisions of the [TRA]." MPA, p. 5. Of course, for benefits to be portable, they must exist in the prior plan so they can be transferred, along with the employee/participant, to a new employer and its plan. Here, of course, the AMPP had no pension assets, no pension obligation, and no

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Notwithstanding any other provisions of Section 3 or 4, but subject to the provisions of any applicable Interchange Agreement in accordance with Section 5, an Employee's Pension Eligibility Service and Pension Calculation Service, or Pension Eligibility Service only, as applicable, shall not include any service which is recognized for purposes of determining pension eligibility or amount under a Former Affiliate Plan (or which would be recognized for those purposes but for the break in service provisions of the Former Affiliate Plan), nor shall any service described in Subsection 3.3 be included in the Employee's Years of Vesting Service unless he satisfies the requirements of Subparagraph 3.1.2(a) or 3.1.2(b), as applicable.

pension service left to transfer (or port) to the new employer (AT&T) and its Plan.

Indeed, the terms of the MPA clearly limit the recognition of service credit under circumstances such as presented here:

> If any covered employee is employed or reemployed by a Hiring Interchange Company after terminating service from a Former Interchange Company subsequent to receiving a lump sum distribution of his accumulated plan benefit under the Former Interchange Company Pension Plan, such covered employee's pension service credit and years of service shall not be recognized by nor granted any credit, in accordance with or pursuant to the provisions of this Agreement, for purposes other than eligibility to participate in or to vest any pension benefit under the Hiring Interchange Company Pension Plan unless and until such covered employee repays such lump sum distribution to the Former Interchange Company Pension Plan in accordance with the terms and conditions of and within the time period provided in such plan.

MPA § 2.6(c). The "Former Interchange Company Pension Plan" in this instance is the AMPP. In order to "port" benefits to a new plan, the AMPP required repayment of the lump sum within one year of the employee's rehire date. AMPP § D-4.

Thus, the MPA is consistent with the Plan terms in effect at the time of Ms. Stewart's hire by AT&T, specifically Rules §§ 2.66.5 and 6.1.4(c), which did not

give Ms. Stewart credit for service that resulted in a lump sum that had not been repaid. The supposed "limiting language" in Rules § 3.3 that is the basis of Ms. Stewart's argument does not limit the application of Rules § 3.3 here in any way. Rather, the BPC interprets the MPA as being consistent with Rules § 3.3 in preventing the recognition of service where a participant has not repaid the lump sum that was based on such service.

(g) Impact of the Merger of the AMPP and the Plan

Next, Ms. Stewart contends that the impact of the Merger as described herein and in the Claim Response is "patently erroneous," for three reasons: (1) the MPA and the TRA required that Ms. Stewart's Ameritech service became service under the Plan when she was hired by AT&T; (2) the terms of Supplement 12 and the definition of CAM Income include her Ameritech service; and (3) the benefit estimates, which were issued before the Merger, show that AT&T included all of Ms. Stewart's Ameritech service in calculating her CAM Benefit. Appeal, p. 18. Ms. Stewart also contends that if the estimates were based on an assumption of the eventual merger of the AMPP and the Plan, then "the Plan was required to expressly state this. It did not." Id. As and for the reasons explained above, the BPC concludes that each of these arguments is incorrect.

First, neither the terms of the MPA nor the TRA (or the terms of the DIA) require recognition of service that has been compensated in full by payment of a lump sum. As just discussed above, the MPA expressly

limits the recognition of service where a lump sump has not been repaid. MPA § 2.6(c). Likewise, the BPC interprets the terms of the DIA as providing and contemplating that the service to be recognized remains uncompensated, and that assets of the prior plan will be transferred to the new plan to compensate the new plan for taking on the resulting benefit obligation that the prior service entails. That did not and could not happen here, and Rules §§ 2.66.5, 6.1.4(c), and 3.3 mandate that no such service credit is given without a repayment of the lump sum at issue.

Second, the terms of Supplement 12 and the definitions of CAM Income, Pension Compensation and Pension Calculation Service are as described above. The BPC concludes, based on its interpretation of these Plan provisions, that Ms. Stewart's compensation while at Ameritech was not earned while she was a "Participant" of the Plan, and thus it is not included in "Pension Compensation" for purposes of S 12.1. Rules § 2.67. Moreover, the terms of Rules §§ 2.66.5 and 6.4.1(c) preclude use of Ms. Stewart's Ameritech service as "Pension Calculation Service."

Third, the benefit estimates were simply that - estimates based on various assumptions. As explained above, these estimates are consistent with the assumption that the AMPP and the Plan would be merged, eliminating the impact of Rules §§ 2.67, 2.66.5 and 6.1.4(c), and thus allowing the simultaneous calculation of Ms. Stewart's CAM Benefit using her Ameritech compensation and service, but also causing her lump sum to partially satisfy the Plan's CAM Benefit obligation. Moreover, this assumption is not a

Plan term or a factor or component of the CAM Benefit obligation; rather it merely and reasonably explains how the benefit estimates were consistent with the actual terms of the Plan. The estimates cannot, and do not, change or modify the Plan terms, and the Claim Response did not suggest or contend otherwise. Indeed, in each instance the estimates calculated Ms. Stewart's actual unpaid benefit obligation under the Plan, both before and after the Merger, consistent with the BPC' s Plan interpretations discussed herein.

(h) The Offset in Section 4.2.6

Next, the Appeal erroneously contends that the Claim Response asserts that "other provisions besides § 4.2.6 of the Plan provide for an offset," and then complains that the Claim Response "cites no such other Plan provision, much less one that authorizes an offset against the CAM Benefit." Appeal, p. 18. The Appeal misconstrues the Claim Response in this regard. The Claim Response merely concluded that no offset provision was necessary for the Plan to take into account the payment of the AMPP' s lump sum to Ms. Stewart as partial satisfaction of the Plan's CAM Benefit obligation once the two plans were merged.

However, because Ms. Stewart and other employees were contending that their CAM Benefits were not satisfied by the payment of the lump sum, and were questioning the absence of offset language similar to Section 4.2.6 of the Plan with regard to other plans that were merged or were to be merged into the Plan (such as the AMPP), the Plan Sponsor did amend the Plan prior to its merger with the AMPP to add such language and clarify the existing

administration of the Plan. As the Appeal acknowledges, this Amendment was not actually necessary (id.), but it was helpful in clarifying existing plan administration, and also for specifying how and to what extent the prior lump sum would partially satisfy the CAM Benefit obligation. By providing for a specific calculation method of an "offset" that Ms. Stewart acknowledges is the actuarial equivalent of her lump sum, the Amendment served an important purpose. By providing for a smaller offset under certain circumstances (the Special Offset), and a larger resulting unpaid CAM Benefit obligation, the Amendment also provided potentially greater benefits to certain employees such as Ms. Stewart. However, the BPC concludes that the Amendment could not and did not reduce the accrued benefit obligation of Ms. Stewart or similarly situated participants.

(i) Double Benefit / Double Service

The Appeal of Claim I concludes with a statement that the BPC does not believe is accurate or true: "Ms. Stewart does not seek a double benefit, double compensation or double service." Appeal, p. 19. In the BPC's view, she demands precisely that. Ms.
Stewart wants to keep her lump sum that was payment in full of her benefit obligation under the AMPP, and yet use the same service and compensation that resulted in her AMPP lump sum as a basis for duplicative benefits under the Plan, without any reduction or acknowledgment that the AMPP lump sum compensated her for such service and compensation and/or partially satisfied the Plan's CAM Benefit obligation. She wants all of her years of service at Ameritech to be multiplied times her

Pension Compensation for her Ameritech years. This would duplicate her AMPP benefit in the calculation of her CAM Benefit, and she contends her lump sum cannot be used to satisfy the CAM Benefit obligation. The BPC concludes that Ms. Stewart is indeed making a claim for double benefits, double compensation and double service.

4. Claims II and III

(a) Summary of Claims II and III

Claims II and III are alternatives to Claim I. In Claim I, Ms. Stewart contends that no offset may be applied to her benefit. If Claim I is found to be correct, then Claims II and III do not apply. Claims II and III contend, as an alternative, that the Special Offset is too large, and results in a benefit to Ms. Stewart that is too small.

Claim II states that the use of the Special Offset is illegal because it violates the anti-forfeiture provisions of ERISA and the Code.

Claim III states that the Special Offset at any age must be computed using the actuarial equivalence factors used to compute her lump sum benefit in 1996.

Under the BPC's interpretation of the Amendment the Special Offset is applied only when it is smaller - that is, when it produces a greater benefit - than the General Offset. The Special Offset takes the lump sum paid, increases it with an implicit rate of return specified in the Plan document, and converts the resulting lump sum plus implicit earnings to an

annuity amount. This amount is then subtracted from the annuity that would have been payable to the participant at early or normal retirement date had the participant not received a lump sum payment earlier.

On the face of the Amendment, the implicit rate of return specified in the Plan varies depending on the date of the lump sum and the date that the offset is subsequently applied (early or normal retirement date).

Ms. Stewart contends that the implicit rate of return in the Special Offset was intended to mimic the rate of return earned by the Plan for the period from the lump sum payment date until December 31, 2003, and 8.5% per year thereafter. She quotes the Plan's summary of material modifications ("SMM"): "the 'Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of prior lump sum distribution(s) from the AMPP." Appeal, p. 22.

Ms. Stewart then claims that implicit rate of return in the Special Offset is "unreasonable" for three reasons.

1. It exceeds the interest rate used in the actuarial equivalence calculation of Ms. Stewart's lump sum.

2. It exceeds the Plan's actual rate of return, which Ms. Stewart claims was 45% through December 31,2003.

3. The Plan, according to Ms. Stewart, "could not

possibly" have earned the rates implicit in the Special Offset because they exceed the rates earned by the S&P 500.

Ms. Stewart further complains that the Plan has refused to provide information on the actual rate of return on Plan assets for the relevant period.

Ms. Stewart does not contend that the Special Offset has been calculated in a manner that conflicts with the terms of the Plan. Rather, she contends that a new provision needs to be added to the Plan, which would include a "properly computed" Special Offset.

Ms. Stewart's "properly computed" offset is actually two different offsets, with the smaller offset being used:

- Ms. Stewart Offset #1 is similar to the Plan's Special Offset, but instead of using the implicit rates of return specified in the Plan, Ms. Stewart would use the interest rate used by the AMPP in computing Ms. Stewart's AMPP lump sum.

- Ms. Stewart Offset #2 is also similar to the Plan's Special Offset, but instead of using the implicit rates of return specified in the Plan, Ms. Stewart would use the "actual" rate of earnings of the pension trust.

If Ms. Stewart's Claim was granted, the Plan would have three offsets: the General Offset; Ms. Stewart Offset #1; and Ms. Stewart Offset #2. Ms. Stewart's request is that all three offsets be computed and the smallest offset (the one that produces the

largest benefit) be used.

(b) Relationship of the Special Offset to the General Offset

As the Claim Letter and Appeal point out, and according to the plain terms of the Amendment, the Special Offset is applied only when it produces a greater benefit (that is, a lesser offset) than the General Offset. The General Offset is the AMPP benefit at age 65 that Ms. Stewart traded for her lump sum benefit.

In 1996 when Ms. Stewart terminated employment with Ameritech, she was given four options for her AMPP pension benefit. One of these options was to take her benefit in the form of an annuity, commencing at age 65, in the amount of $2,400.61 per month payable for life. Another option was to take a lump sum of $110,450.36. These facts are recited in the Claim Letter, and the BPC accepts them as accurate. The AMPP also provided for two other options which were offered to Ms. Stewart. She could take her benefit in the form of an annuity, commencing immediately, or she could take her benefit in the form of an annuity, commencing at any time of her choosing between her termination of employment and age 65. Ms. Stewart chose the lump sum.

The General Offset reduces Ms. Stewart's monthly annuity at age 65 by $2,400.61 - the amount that she could have elected instead of the lump sum. In the BPC's view, the two amounts are "equivalent" in this sense: Ms. Stewart apparently concluded that the $110,450.36 lump sum was at least as valuable to her

as the annuity of $2,400.61 at age 65. The BPC also concludes they are equivalent under the actuarial equivalence rules under the Plan as of the date the lump sum was paid to Ms. Stewart.

(c) Analysis

1. The Special Offset Does Not Use the Actual Rate of Return of the Plan

Ms. Stewart's Claim II assumes that the implicit rate of return built into the Special Offset is improper if it is not the actual rate of return of the Plan through December 31, 2003. However, in a defined benefit plan the benefits are determined in accordance with the Plan terms, not in accordance with the actual investment earnings of the Plan. The Plan does not specify that the implicit rates in the Special Offset are (or must be) the actual Plan rates of return. As Ms. Stewart points out,

> "ERISA requires that every employee benefit plan be established pursuant to a written instrument, and the plan be administered in accordance with its written terms. 29 U.S.C. of §1102(a); 29 U.S.C. § 1104(a)(1)(D). Accordingly, ERISA does not permit benefits to be based on the plan sponsor's purported unwritten intent."

Appeal, p. 13 (Emphasis in original).[14]

Ms. Stewart does not contend that there is any relevance to the actual rate of return of the Plan, other

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[14]The same point is made again on page 18 of the Appeal.

than her claim that the intent of the sponsor in drafting the Special Offset was that the actual Plan rate of return be used. However, the Plan itself makes no mention of the rate of return in the Plan, and the rates specified in the Plan are not consistent with that interpretation. For example, as detailed in Ms. Stewart's Appeal, the cumulative rate of earnings to be applied to an AMPP lump sum paid in August, 1996 is "91.0774%". Appeal, p. 21. Ms. Stewart contends that the actual earnings of the Plan were closer to 45%. The BPC does not interpret "91.0774%" to mean "45%", or "the actual rate of return of the Plan."

It is possible that the plan sponsor believed 91.0774% to be the actual rate of return of the Plan, and it is also possible that the 91.0774% was not the actual rate of return of the Plan. However, interpreting the Plan is not the same as divining the factual beliefs of the plan sponsor. The BPC concludes that the plan sponsor could have believed 91.0774% to be the actual rate of return, and yet intended that 91.0774% be used regardless of whether it is the actual rate or not.

The BPC interprets the Plan to conclude that "91.0774%" does not mean "the actual rate of return of the Plan," and thus, to the extent Ms. Stewart's Claim Letter and Appeal argue that the actual rate of return must be used, the BPC rejects the argument.

2. <u>The Special Offset is Not Required to be the Actuarial Equivalent</u>.

Ms. Stewart contends that the Special Offset produces too large of an offset, and cannot be used,

because it is not actuarially equivalent to the AMPP lump sum using the AMPP actuarial assumptions.

If the Special Offset were the only offset in the Plan, the BPC might view Ms. Stewart's contention differently. The BPC has not attempted to determine whether the Special Offset would be improper if it applied on its own (that is, not used as a "lesser of" offset in combination with the General Offset). The BPC has not attempted that analysis because that hypothetical situation does not exist in this Appeal.

The Claim Response rejected Claims II and III in part because Ms. Stewart declined to contend that the General Offset is too large. (The Claim Response also concluded that the General Offset is not too large, a result with which the BPC agrees.) In the Appeal, Ms. Stewart has still not contended that the General Offset is too large, and the Special Offset applies only when it is smaller than the General Offset. Thus, to grant Ms. Stewart's Claims II and/or III, the BPC would have to find that the Special Offset is improper because it sometimes produces a larger benefit than the General Offset.

The BPC notes that Ms. Stewart's requested relief suffers from the same supposed defect as the Plan's Special Offset. Specifically, to the extent Ms. Stewart Offset #2 uses the Plan's rate of return, it does not use the AMPP lump sum actuarial assumptions, and would therefore sometimes produce a smaller offset and a larger benefit. Thus, the BPC concludes that if Ms. Stewart's requested relief is proper and permissible, then the Plan's Special Offset must also be proper and permissible.

Moreover, the BPC does not agree with Ms. Stewart's argument as to why the Special Offset must be the actuarial equivalent. Ms. Stewart claims that this rule is based on Treasury Regulation 1.411(a)-4 which explains that adjustments to plan benefits in excess of reasonable actuarial reductions *can* result in an impermissible forfeiture. Appeal, pp. 19-20 (emphasis added). However, to the extent the Special Offset exceeds the General Offset, it does not apply. It is only when the Special Offset is less than the General Offset that it applies. The Treasury regulation cited does not prohibit reductions that are less than the permissible reductions, nor does Ms. Stewart contend that it contains such a prohibition.

Thus, as the BPC understands it, Ms. Stewart's logic boils down to this:

1. The offset applied cannot be too big.
2. The offset applied is sometimes less than the General Offset.
3. Therefore, the offset is illegal.

There is an obvious flaw in this logic unless Ms. Stewart contends (as she does not) that the General Offset is too big.

3. Ms. Stewart's Claims II and II! Cannot Be Granted if the General Offset is Proper and Permissible.

The Claim Response concluded that Claim II lacked merit because Ms. Stewart did not contend that the General Offset was too big. Specifically, Ms. Stewart never contended that the offset would be too

big if there had been no Special Offset, but only a General Offset. Because the Special Offset can only serve to reduce the offset (and increase Ms. Stewart's benefit), the Claim Response concluded that the Special Offset could not possibly harm Ms. Stewart unless the General Offset were impermissible.

In the Appeal, Ms. Stewart acknowledges this "rationale" (Appeal, p. 26). She states that she disagrees with this analysis and conclusion, but never explains why. In the Appeal, she still does not contend that the General Offset is too big.

4. The General Offset is Proper and Permissible.

In Claims II and III, Ms. Stewart has specifically declined to contend that there is any defect in the General Offset if it were the only offset in the Plan (and assuming Claim I has been denied). Indeed, the logic of the General Offset is compelling:

1. Ms. Stewart was given a proper choice between payment of a lump sum of $110,450.36 and a monthly annuity at age 65 of $2,400.61.

2. Ms. Stewart elected the lump sum.

3. Had Ms. Stewart not chosen the lump sum, her benefit from the AMPP at age 65 would have been an annuity of $2,400.61.

4. The reduction in the Plan's benefit on account of the AMPP benefit, in the form of an annuity at age 65, should be $2,400.61.

If Ms. Stewart's AMPP lump sum was worth less than an annuity of $2,400.61, then she would presumably not have chosen the AMPP lump sum. Furthermore, even if the AMPP lump sum was worth less than the $2,400.61 per month, her claim would be with respect to the amount of the lump sum, not for a lesser offset.

5. The Offset to the Early Retirement Benefit is Not Required to be Actuarially Equivalent to the Offset to the Normal Retirement Benefit.

Ms. Stewart's Claims II and III rely heavily on ERISA § 204(c)(3) which provides in relevant part (as quoted by Ms. Stewart):

> In the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age ... the employee's accrued benefit. .. shall be the actuarial equivalent of such benefit or amount.

This statutory provision creates a three step analysis. First, one must determine the accrued benefit payable as an annuity commencing at normal retirement age (which is age 65 for the Plan). Second, one determines the accrued benefit at an earlier age as a benefit that is actuarial equivalent in amount to the annuity at age 65. Third, the benefit at the earlier age cannot be less than the benefit in step two to the extent it is vested.

In the BPC's view, this statutory provision does not support Ms. Stewart's contention that *the offset*

must be actuarially equivalent. At best, it may require that the benefit paid to Ms. Stewart at an early retirement date be no less than an actuarially equivalent amount to the accrued benefit at age 65.

Ms. Stewart makes no claim that her early retirement benefit is less than actuarially equivalent to her annuity benefit at age 65. In fact, Ms. Stewart qualifies for an enhanced early retirement benefit in which the monthly amount is equal to the monthly amount of the benefit at age 65. Thus, the early retirement benefit is substantially *more valuable* than the age 65 benefit, not less valuable.[15]

If one were to require strict actuarial equivalence between the normal retirement benefit and the early retirement benefit, Ms. Stewart's early retirement benefit would have to be reduced so that it is no more valuable than the normal retirement benefit. No such reduction is needed because the only requirement flowing from ERISA § 204(c)(3) is that the early retirement benefit be no less valuable than the normal retirement benefit that is accrued at the employee's date of termination. There is no such claim, and any such claim would be frivolous. Thus, ERISA § 204(c)(3) gives no support to Ms. Stewart's contention that the offset, viewed in isolation from the benefit itself, must be actuarially equivalent at all ages.

The Appeal details six points in the Claim denial that

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[15]For example, in Ms. Stewart's case, it is obvious that a monthly benefit of $1,303.12 payable commencing at age 60 is substantially more valuable than a benefit of $1,303.12 payable commencing at age 65. The difference in value is 60 payments of $1,303.12 each.

Ms. Stewart claims are "bogus" and "irrelevant."

Point 1: Ms. Stewart contends that the Claim Response asserts Ms. Stewart "expects a different methodology or offset amount with respect to the General Offset." Ms. Stewart then contends this is irrelevant to whether a properly computed Special Offset would be smaller. Actually, both the Claim Response and the BPC conclude that Ms. Stewart has *not* requested any modification to the General Offset. Issues relating to the question of whether there is a "properly computed" Special Offset in the Plan according to Ms. Stewart's methodology are discussed above. The BPC agrees, and it appears that Ms. Stewart agrees, that the General Offset is appropriate.

Point 2: The Claim denial suggests that Ms. Stewart wants both the AMPP lump sum plus the $2,400.61 per month AMPP annuity. In her Appeal, Ms. Stewart now denies she wants *either* of these benefits, but rather only wants a properly computed CAM Benefit. It is undeniable that Ms. Stewart *already* received the $110,450.36 AMPP lump sum. Now she wants to receive a benefit with respect to the exact same service that gave rise to that lump sum. It is also undeniable that Ms. Stewart elected to receive the lump sum in lieu of $2,400.61 per month, but that she now wants to receive the same total monthly benefit she would have been entitled to had she not received the AMPP lump sum. As discussed above, the BPC believes Ms. Stewart wants to receive two full pensions for the same service.

Point 3: Ms. Stewart objects to the statement in the Claim denial that "the crediting of AMPP service

and simultaneously offsetting it by a specified amount is not constrained by any rule in ERISA that Ms. Stewart has raised." Ms. Stewart contends that her service *was* credited under the Plan before April 27, 2004 and that there was no offset prior to April 27, 2004. Those two issues are dealt with elsewhere in this letter. However, Ms. Stewart has still not offered any rule in ERISA that would prohibit the Plan from simultaneously crediting additional service and offsetting that service by any amount up to 100% of the additional amount credited.

Point 4: Ms. Stewart objects to the statement in the Claim denial that AT&T was not obligated by ERISA to credit Ms. Stewart with AMPP service. She contends this is a "bogus" and "irrelevant" point, but cites only arguments directed at Claim I, not at Claims II and III. If Claim II and/or III is under consideration, then it is axiomatic that an offset is permissible, as Ms. Stewart's requested relief includes an offset. Thus, the point that ERISA would not constrain the simultaneous crediting and 100% offsetting of AMPP service is not refuted by Ms. Stewart's arguments. Ms. Stewart does contend that the MPA and TRA § 559 require the double counting of Ms. Stewart's AMPP service.

Point 5: Ms. Stewart contends that the purely legal opinions of her actuary, David Fleiss, deserve to be given weight by the BPC. The Claim denial concluded his opinions were not supported by analysis, reasoning or explanation. She now contends that Mr. Fleiss has provided the "basis" for his opinion. However, the only "basis" that appears in his affidavit is a series of unexplained citations to statutes,

regulations and judicial opinions. In the BPC's view, Mr. Fleiss' affidavit does not add any weight to the claim.

Point 6: Ms. Stewart objects to the assertion in the response from the Plan administration that the actual Plan earnings are not relevant because the interest rates applicable to the Special Offset were established in the Plan. Ms. Stewart contends that the interest rate that is applicable to the Special Offset is determined in the 2004 SMM which states that the "Special Offset recognizes the impact of lost earnings experienced by the pension trust as a result of the prior lump sum distribution(s) from the AMPP and approximates the asset recapture by the pension trust had lump sum repayments been allowed." Appeal, p. 28.

Ms. Stewart contends that, "to the extent that there is a conflict between the SMM and the Plan (or its Amendments), Ms. Stewart is entitled to have her CAM Benefit determined under the SMM." As discussed above, the BPC interprets Section 4.2.6 of the Plan (which contains the Special Offset) in a way that is not in conflict with the SMM. Under the BPC's interpretation, Ms. Stewart is not correct that the Plan terms automatically encompass a benefit equal to the greater of the benefit under the Plan or the benefit computed in accordance with the SMM.

The SMM prominently states that:

> This SMM is an attachment to your SPD for the Plan. It is written for easy readability. Therefore, it may contain generalizations and colloquialisms

> rather than precise legal terms. Also, this document only summarizes benefits and individual situations may vary. In all cases, the official documents for the Plan govern and are the final authority on the terms of the Plan, and, if there are any discrepancies between the information in the SMM, the SPD and the Plan, the Plan document will control

Reading the SMM, it is virtually impossible to miss this caveat, as it appears on the first page after the cover page, on a page that is otherwise nearly blank. The Claim and the Appeal do not explain the basis for Ms. Stewart's contention that she is entitled to the benefit under the SMM if it is greater.

Furthermore, the BPC does not believe the description in the SMM of the Special Offset is sufficiently precise to allow calculation of the amount of the Special Offset from the terms of the SMM.

Moreover, the BPC has interpreted Section 4.2.6 of the Plan, and has specifically determined that the Special Offset is based on the rates in the Plan, regardless of whether the actual earnings of the trust fund are different. In making this determination, the BPC considered the language in the SMM, including the caveat stating that, "if there are any discrepancies between the information in the SMM, the SPD and the Plan, the Plan document will control." Therefore, your request to receive additional pension benefits on behalf of Ms. Stewart is denied.

The BPC's determination is the last forum for the administrative appeals process. You have exhausted

the internal administrative review process. Federal law gives you the right to bring an action under Section 502(a) of the Employee Retirement Income Security Act. In addition, you are entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim for benefits. The BPC considers this matter closed.

Sincerely,
Christine Holland, Secretary, Benefit Plan Committee

PX38–Affidavits of, and Net Credited Service Notices to, Stewart and Eight Other Leapfroggers

AFFIDAVIT OF KATHLEEN A. STEWART

STATE OF OHIO
COUNTY OF MEDINA

1. My name is Kathleen A. Stewart. and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT&T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth, Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services, Inc. or one of its predecessors ("Ameritech") from October 18, 1971 until July 1, 1996 when my department was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC")

acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"). dated February 19,2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31; 2001, (ii) my "Net Credited Service Date" is October 18, 1971 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan, each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 19, 2009 Kathleen A. Stewart

Signed before me this 19 day of August 2009.

Douglas A. Metzger
(notary)

Douglas A. Metzger
Notary Public: State of Ohio
My Commission Expires March 19, 2011

A-356

SBC PENSION PLAN SERVICE TRANSFER

FEBRUARY 19, 2001

KATHLEEN A. STEWART
1323 HARMONY DR
WADSWORTH, OH 44281

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **October 18, 1971**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 300541778

AFFIDAVIT OF BILL L. BAIL

STATE OF OHIO
COUNTY OF MEDINA

1. My name is Bill L. Bail, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from November 7, 1988 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is November 7, 1988 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 24, 2009 Bill L. Bail

Signed before me this 24 day of August 2009.

Jared C. Roberts
(notary)

Attorney Jared C. Roberts
Resident Wayne County
Notary Public: State of Ohio
My Commission Has No Expiration Date
SEC 147.03 RC

A-361

SBC PENSION PLAN SERVICE TRANSFER

FEBRUARY 19, 2001

BILL L. BAIL
2669 WALDERN RD
NORTON, OH 44203

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **November 7, 1988**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 278543375

AFFIDAVIT OF MARK S. BOOTH

STATE OF WISCONSIN
COUNTY OF WAUKESHA

1. My name is Mark S. Booth, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from January 3, 1978 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

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8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is January 3, 1978 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 21, 2009 Mark S. Booth

Signed before me this 21 day of August 2009

Eric Hummer, Jr.
(notary)

Notary Public
Eric Hummer Jr
State of Wisconsin

A-366

SBC PENSION PLAN SERVICE TRANSFER

FEBRUARY 19, 2001

MARK S. BOOTH
N21 W22103 GLENWOOD
WAUKESHA, WI 531861066

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **January 3, 1978**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 390640213

AFFIDAVIT OF TIMOTHY A. BRIGNER

STATE OF OHIO
COUNTY OF WAYNE

1. My name is Timothy A. Brigner, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from July 13, 1981 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

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5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program.

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is July 13, 1981 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before

December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 18, 2009 Timothy A. Brigner

Signed before me this 18th day of August 2009.

Tina M. Hoover
Notary Public, State of Ohio
My Commission Expires Sept. 14, 2009

Tina M. Hoover
(notary)

SBC PENSION PLAN SERVICE
TRANSFER

FEBRUARY 19, 2001

TIMOTHY A. BRIGNER
231 NORTH ST
RITTMAN, OH 44270

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **July 13, 1981**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 283608750

AFFIDAVIT OF JOEL S. CAVALIER

STATE OF OHIO
COUNTY OF CUYAHOGA

1. My name is Joel S. Cavalier, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from June 25, 1973 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is June 25, 1973 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before

December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: 8/19/2009 Joel S. Cavalier

Signed before me this 19 day of August 2009.

Janice E. Popadak
(notary)

Janice E. Popadak, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Dec. 23, 2011

A-376

SBC PENSION PLAN SERVICE
TRANSFER

FEBRUARY 19, 2001

JOEL S. CAVALIER
5698 SPRING GROVE RD.
SOLON, OH 44139

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **June 25, 1973**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 273466648

AFFIDAVIT OF RICHARD J. HAGAN

STATE OF MICHIGAN
COUNTY OF OAKLAND

1. My name is Richard J. Hagan, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from July 12, 1977 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is July 12, 1977 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before

December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 18, 2009 Richard J. Hagan

Signed before me this 18th day of August 2009.

Charlene McLean
(notary)

Charlene McLean
Notary Public, State of MI
County of Livingston
My Commission Expires Jan. 24, 2012
Acting in County of Oakland

A-381

SBC PENSION PLAN SERVICE
TRANSFER

FEBRUARY 19, 2001

RICHARD J. HAGAN
25523 ANTHONY DR
NOVI, MI 48375

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **July 12, 1977**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c

AFFIDAVIT OF STEPHEN R. JONES

STATE OF OHIO
COUNTY OF MEDINA

1. My name is Stephen R. Jones, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from January 22, 1972 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is January 22, 1972 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: 8/21/09 Stephen R. Jones

Signed before me this 21 day of August 2009.

Douglas A. Metzger
(notary)

Douglas A. Metzger
Notary Public, State of Ohio
My Commission Expires March 19, 2011

A-386

SBC PENSION PLAN SERVICE TRANSFER

FEBRUARY 19, 2001

STEPHEN R. JONES
1323 HARMONY DR.
WADSWORTH, OH 44141

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **January 22, 1972**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 278547347

AFFIDAVIT OF JAMES A. SADOWSKI

STATE OF OHIO
COUNTY OF CUYAHOGA

1. My name is James A. Sadowski, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from August 28, 1978 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is August 28, 1978 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 19, 2009 James A. Sadowski

Signed before me this ____ day of August 2009.

_____
(notary)

A-391

SBC PENSION PLAN SERVICE
TRANSFER

FEBRUARY 19, 2001

JAMES A. SADOWSKI
7000 DAISY AV
BRECKSVILLE, OH 44141

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **August 28, 1978**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c

AFFIDAVIT OF DONALD E. SHAFFER

STATE OF OHIO
COUNTY OF CUYAHOGA

1. My name is Donald E. Shaffer, and the facts asserted herein are based on my own personal knowledge.

2. I proffer this Affidavit in support of Plaintiff Kathleen A. Stewart's Brief in Opposition to Defendants' Motion for Summary Judgment in Stewart v. AT &T Inc., et. al., No. 5:07-cv-318-H (Hon. Harry Lee Hudspeth. Senior U.S. District Judge).

3. I worked in a management position for Ameritech Services. Inc. or one of its predecessors ("Ameritech") from December 1, 1975 until July 1, 1996 when I was outsourced to IBM Global Services, Inc. ("IBM Global").

4. As a management employee of Ameritech, I was a Participant in the Ameritech Management Pension Plan ("AMPP") until my severance from Ameritech on July 1, 1996.

5. As a result of my separation from Ameritech, I received a lump sum distribution of my AMPP accrued benefit shortly after July 1, 1996.

6. In 1999, SBC Communications Inc. ("SBC") acquired Ameritech.

7. On January 31, 2001, I was re-hired by SBC, which is now known as AT&T.

8. As an employee of SBC, I was a Participant in the SBC Pension Benefit Plan-NonBargained Program ("SBC Plan"), which is now known as the AT&T Pension Benefit Plan-NonBargained Program,

9. It is my understanding that SBC and AT&T refer to former Ameritech managers like me who were outsourced to IBM Global in the 1990s and later re-hired by SBC as "Leapfroggers."

10. On or about February 19, 2001, I received a document from SBC or its agent the SBC Pension Plan Service Center ("Document"), dated February 19, 2001 and entitled "SBC Pension Plan Service Transfer," which Document I have attached to my affidavit.

11. The Document notes that (i) my re-hire date with SBC is January 31, 2001, (ii) my "Net Credited Service Date" is December 1, 1975 (the date I was hired by Ameritech), and (iii) my Net Credited Service Date is an "important factor" in determining my SBC benefits.

12. Based on my conversations with other Leapfroggers in February 2001, it is my belief that all Leapfroggers received an identical Document from SBC or its agent the SBC Pension Plan Service Center, except that their respective Net Credit Credited Service dates differed.

13. I subsequently received several estimates of my Career Average Minimum ("CAM") benefit under the SBC Plan each of which included my Ameritech service in the CAM benefit calculation.

14. I received at least two of these estimates before December 31, 2004, the date the AMPP merged into the SBC Plan.

Dated: August 21, 2009 Donald E. Shaffer

Signed before me this ____ day of August 2009.

_____
(notary)

A-396

SBC PENSION PLAN SERVICE
TRANSFER

FEBRUARY 19, 2001

DONALD E. SHAFER
20923 QUEENSBRIDGE LANE
N ROYALTON, OH 44133

The SBC Pension Plan Service Center maintains your Net Credited Service Date. This date may affect your retirement . benefits and is an important factor in determining many of your other company sponsored benefits and entitlements.

Our records indicate that you transferred to your company on **January 31, 2001**. Your Net Credited Service Date was not affected by your transfer and remains **December 1, 1975**.

Please call the SBC Pension Plan Service Center at 1-800-557-3640 if you have any questions or if you need further assistance with respect to your Pension Benefit. The SBC Pension Plan Service Center interactive voice response system can be accessed 24 hours a day, seven days a week. Participant Service Representatives are available to assist you from 7:00 AM to 7:00 PM Central Time, (5:00 AM to 5:00 PM Pacific Time), Monday through Friday, except for some holidays. In all cases, the official plan documents govern and are the final authority on the terms of the plan. SBC Communications Inc. (SBC) reserves the right to terminate or amend the plan. Participation in the plan is neither a contract nor a guarantee of future

employment.

T05c 198425162